



Title: CHILDREN FIRST, OFFENDERS SECOND

An aspiration or a reality for youth justice in Wales

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CHILDREN FIRST, OFFENDERS SECOND

An aspiration or a reality for youth justice in Wales

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**Professional Doctorate in Leadership in Children and
Young People's Services**

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CHILDREN FIRST, OFFENDERS SECOND

An aspiration or a reality for youth justice in Wales

Susan Brace Thomas

ABSTRACT

England and Wales have the same criminal justice system, but devolution in Wales has created some differences between the two countries. In Wales all child and young person related services, with the exception of youth justice, are devolved to the Welsh Government. It is claimed by some that devolution has resulted in youth justice policy in Wales diverging from that of England. This is because of the Welsh Government's adoption of the United Nations Convention on the Rights of the Child, which has been incorporated into its domestic legislation. This is not mirrored in England, as the UK Government's youth justice policies during the New Labour period have been characterised as punitive, risk-led and managerialist. Although attitudes and approaches changed during the Coalition Government's administration, the fundamental features of the system have not. Youth justice in Wales has been described as taking a 'children first, offenders second' approach to children and young people in trouble with the law, which by inference suggests the opposite for youth justice in England. The purpose of this study is to examine whether there is a different youth justice in Wales. This was done by scrutinising a range of evidence that included the policies of the Youth Justice Board for England and Wales and the Welsh Government and the interface and relationship between them, to determine what youth justice in Wales looks like and how it compares to youth justice in England. This was supported by an analysis of YJB data about the operation of the system, which disaggregated information about Wales from national statistics, to establish if outcomes for young people in Wales differed from their counter-parts in England. Finally, the perspectives of practitioners in two youth offending teams in England and two in Wales were explored to establish what their practice cultures looked like and the extent to which practitioners had similar or different views about how the system should and does operate, whether a 'children first' philosophy is dominant in Wales and how this relates to the policy positions of the respective governments.

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DECLARATION

I declare that this thesis is my own unaided work. It is being submitted for the degree of Professional Doctorate in Leadership in Children and Young People's Services at the University of Bedfordshire.

It has not been submitted before for any degree or examination in any other University.

Name of candidate: Susan Thomas

Signature:

A handwritten signature in black ink, appearing to be 'S. Thomas', written in a cursive style.

Date: 20th July 2015

Chapter one

Introduction

1.1 Background

In recent years, increasing attention has been devoted to the fact that while England and Wales represent a single jurisdiction, youth justice policy in each country is distinct. In particular, claims have been made that youth justice in Wales is more child friendly than in England, as a result of policy in the former that children in trouble with the law should be treated as children first and offenders second. This thesis reports on a study of the extent to which there is distinct youth justice practice in Wales, and how far can this be attributed to the policies of the Welsh Government (WG). This research derived from the author's interest in youth justice policy development and implementation and in particular, how and to what extent policies and initiatives in Wales are diverging from those in England. This originates from working in the sector in Wales for nearly 20 years.

In 1997 there was an affirmative devolution referendum which led to the Government of Wales Act 1998 and the creation of the National Assembly for Wales in 1999. The devolution settlement for Wales contains 20 areas for which the Welsh Assembly has responsibility. This includes education and training, health services, housing and social welfare, all of which provide services to children and young people. Transfer of power from Westminster, however, did not include policing and criminal justice (including court administration, the probation service, the custodial estate and youth justice), which remain 'reserved' to the UK Government (UKG). As a result, the WG has no authority in relation to the statutory framework for youth justice, national standards and case management guidance which are all determined by the UKG for the whole of England and Wales.

As devolution has become embedded in Wales, policy differences that impact upon the youth justice landscape have emerged in the areas for which the WG has responsibility for, and new legislation has been introduced to support its implementation. For example, the WG determines what the national education curriculum looks like, which includes the statutory requirement to learn Welsh. The Mental Health (Wales) Measure 2010, the Social Services and Well-being (Wales) Act 2014 and the Housing (Wales) Act 2014 have a similar focus in seeking to ensure that statutory and other services work effectively together, to improve outcomes for service users. Further, Wales has based its policies for children and young people on the United Nations Convention on the Rights of the Child (UNCRC) and

incorporated it into its domestic legislation, which the UKG has not. The Convention enshrines a series of rights (in the form of 54 articles) which promote the best interests of children and young people, to ensure non-discrimination and to give them a voice in matters that affect them. It would therefore be incorrect to assume that policies in England and Wales always mirror each other, as there is evidence of strategic difference.

Accordingly, while youth justice is not devolved in Wales, it has a strong interface with devolved services. This is necessary because some of those services are statutory members of youth offending teams (YOTs), notably education, health and social welfare and others, such as housing, are providers of services to which young people in the youth justice system sometimes require access to. The bilateral relationship between the UKG and WG requires continual discussion and negotiation about initiatives, policies and practices. A full account of youth justice in Wales therefore requires consideration of how the policies of the UKG and WG impact on each other and how strategic differences in Wales affect the delivery of services to Welsh children in conflict with the law.

The opportunity which devolution created for the WG to develop its own policies has also extended to youth justice. Whilst there is not a direct correlation between devolution and policy responsibility in the same way as there is for education and social care, devolution has provided the space for the 'dragonisation' of youth justice (Haines 2010:233) and the adoption of policies that are in accord with the WG's commitment to children's rights. The *All Wales Youth Offending Strategy* (WG/YJB 2004) is a joint strategy agreed by the WG and Youth Justice Board for England and Wales (YJB). It indicates the context for youth justice services was 'significantly' different to that in England, sets out the aims of both governments and the 'shared foundation' for the way in which youth justice would be delivered in Wales, stressing it was necessary for YOTs and devolved services to work closely together to stop young people from offending (WG/YJB 2004: Foreword). It contains a number of principles that were specific to Wales; prevention being better than cure, the treatment of young people as children first and offenders second and the availability of ten universal entitlements to all young people (aged 11 to 25 years of age). This stood in contrast to the UKG's youth justice policies of the time that have been characterised as punitive, risk-led, deficit-focused and unfairly responsibilising children (Goldson 2002; Case 2006; Muncie 2008; Pitts 2008; Gray 2009). The distinctions in the *All Wales Youth Offending Strategy* therefore implied that youth justice would be approached in a different way in Wales. These different philosophical premises suggest there might be a tension in the way that YOTs in Wales operate, as UKG justice policy directives apply equally in Wales and are non-negotiable. (Indeed some of these directives also featured in the *All Wales Youth*

Offending Strategy). The potential for such tension raises interesting questions about whether and to what extent youth justice practice in Wales is influenced by the distinctive features of the Welsh policy content.

1.2 Rationale

The rationale for this study came from the evidence of legal and political difference in Wales. Whilst the *All Wales Youth Offending Strategy* indicated variance from UKG, as did academic observation and commentary, what had not been explored to any significant degree, was the voice of the practitioner, and importantly whether practitioners in YOTs in Wales worked differently to their counter-parts in England and if so, why this was the case. The study examines the views, perceptions, priorities and practices of practitioners in two YOTs in Wales, with two in England, to compare and contrast their experiences. It explores the characteristics that underpin the policies of the WG, such as children's rights and the risk-led priorities of the UKG and how they related to the practice cultures of the YOTs studied. To date (to the author's knowledge) there have been no studies which have compared practice in England to that in Wales. This research is intended to address that gap. The literature review (chapter two) confirms that research into youth justice practice in Wales is limited and largely confined to practice in a single locality (Swansea). An aim in designing this study was to extend the research evidence by examining practice in other YOTs in Wales.

In order to provide a context for understanding the evidence derived from this fieldwork, the author also identified a range of other relevant data sources that were amenable to original analysis. For instance, the Communities and Culture Inquiry, undertaken on behalf of the National Assembly for Wales, in 2010, into the experience of Welsh children in the secure estate (National Assembly for Wales 2010), has a repository of reports and transcripts that provide information from a variety of individuals in the WG and YJB about policy developments and why some of the decisions have been made about youth justice in Wales. To the author's knowledge this had not previously been examined to any significant degree (in a research context) and was a potentially rich source of data about policy decisions in Wales, taken from the different government perspectives.

A broad range of youth justice statistics published annually by the YJB provides detailed information about each YOT in England and Wales (notably the age, gender and ethnicity of the caseload in each locality, the numbers of pre-court and court disposals, the types of offences committed and use of custody). Previous analysis has not routinely separated

England and Wales for reporting purposes, but the data allowed comparison of trends between the countries, as well as providing contextual information about youth justice in Wales.

A further consideration was the wider context of devolution, in particular how the current arrangements operate and the future possibility that the existing settlement in Wales will be expanded to incorporate youth justice. This study provided an opportunity to build-up knowledge about youth justice in Wales as distinct from England (as it currently stands) and how it functions in a semi-devolved setting. The WG has demonstrated an interest in exploring the risks and benefits of devolving youth justice by commissioning Professor Rod Morgan to examine this (Morgan 2009) and the 2014 Silk Commission (set up to review constitutional arrangements in Wales) recommended that youth justice should be devolved (Commission on Devolution in Wales 2014). The Scottish Referendum in 2014 also raised interest in devolution more generally, the degree to which it should occur across the home nations and to which functions it should apply. Although not a substantive part of this study, devolution is an important feature of the current political landscape and possibly the future one, if government responsibility for youth justice changes.

In summary, the evidence suggested it would be worthwhile to explore youth justice practice in Wales as compared to England, awareness of the *All Wales Youth Offending Strategy* and its impact in the youth justice community, the relationship of the UKG to the WG, how their respective policies have been adopted and accommodated and the context in which youth justice operates in Wales (as distinct from England). This would include using data that could provide a new perspective and enhance existing knowledge about Wales.

1.3 Research Aims

The main research question is 'to what extent is there is distinct youth justice practice in Wales, and how far can this be attributed to the policies of the WG'. It aimed to:

- Establish whether there is a discernibly different approach to youth justice in Wales because of the 'children first and offenders second' approach adopted by the WG.
- Establish whether there is difference or similarity of approach when comparing practice in selected youth offending teams (YOTs) in England and in Wales.
- Identify the key influences on practice in the research sites.

1.4 Structure of the thesis

An outline of the chapters contained in the thesis is outlined below.

Chapter two is a review of relevant literature. It starts with observations about comparative analysis and the availability of literature about youth justice in Wales and what it says. It then examines key policy documents from England and Wales to identify strategic themes and priorities. It presents a discussion of 'dragonisation' and explores the practice landscape in both countries. It considers the extent of welfare-orientation and whether the 'best interests' of the child are always pursued, noting some tensions in ensuring this and discussing the practice focus in Swansea in particular. The chapter concludes by outlining the areas for further investigation in the study.

Chapter three describes the methodology and research strategy. It starts with a discussion of qualitative and quantitative methods and the decision to take a mixed methods approach. The chapter then describes the literature search strategy; the breadth of material sourced and the inclusion of government statistical data to enable comparisons to be made between England and Wales, in a number of areas of practice. It then presents the different stages in the research, the data collection methods and methods of analysis. This includes how the YOT sample was identified, ethical considerations, the choice of research tools (surveys, questionnaires and interviews) and what data was obtained from each research site. The chapter concludes by discussing the limitations of the study.

The remaining chapters present the findings of the study.

Chapter four examines the interface and relationship between the UKG and WG, the YJB's role in Wales, WG policy developments and various views on the devolution of youth justice to Wales. It discusses the challenge the bilateral relationship presents, the degree of alignment between the two governments and actions the WG has taken to extend its influence over youth justice.

Chapter five focuses on whether and to what extent youth justice in Wales is parallel and equivalent to that in England. This is examined from a variety of perspectives; the funding arrangements in both countries, the size of YOT caseloads, the extent to which youth justice services are comparable and some of the initiatives that have developed in each country. It acknowledges the impact of rurality on service delivery in Wales and concludes with a comparison of re-offending rates in England and in Wales.

Chapter six compares the approaches to youth justice of the four YOTs in the study to identify whether there were differences between them in their attitudes to practice. It discusses the outcome of one of the research instruments (a ranking exercise), and contrasts the aggregated responses from England and Wales and similarities and differences between the individual teams. It discusses internal and external influences on practice and whether practices in England and in Wales can be divided along national lines. The chapter also examines knowledge and awareness of the *All Wales Youth Offending Strategy* from practitioner and YOT manager perspectives.

Chapter seven is the first chapter that takes a more detailed look at a particular area of practice. It examines UKG and WG policy towards targeted prevention, the initiatives that have been developed in both countries and discusses matters associated with determining the efficacy of preventative services. The chapter also considers anti-social behaviour and the use of anti-social behaviour orders, their function in preventative strategies and trends in use in England and in Wales. A number of themes are investigated in relation to prevention and its role in youth justice, which starts with a summary of the preventative services that each YOT has and is followed by practitioner views on targeted prevention, its role in stopping criminalisation, the role of children's services in prevention, views on other preventative activity (with schools, the Youth Service and families) and the perceived effectiveness of what is provided. The chapter concludes with discussion of the links YOTs have to mainstream non-justice services and the role of the practitioner as an advocate/broker on behalf of young people.

Chapter eight explores developments in pre-court diversion in England and in Wales and the impact on first time entrants to the youth justice system in both countries. The chapter discusses the first time entrant target, examines trends in England and in Wales from YJB data and the impact of different initiatives in England (Triage) and Wales (Bureau) on the use of pre-court disposals. A number of themes are also pursued, notably practitioner views on whether there should always be punishment for criminal acts and the extent to which informal diversion should be prioritised over formal sanctions. The chapter examines the impact of pre-court diversion in each YOT locality studied and presents what practitioners believe has impacted on reductions. The chapter ends with a short discussion on the effect of falling entrants to the youth justice system on YOT caseloads and how this has been experienced in England and in Wales.

Chapter nine starts by contextualising concerns about the use of custody and the UKG and WG's position on its use. The chapter then goes on to examine custodial trends in England

and in Wales (from YJB statistical data), highlighting differential use on a locality basis. The YJB data is also used to examine (on a comparative basis), custody as a proportion of all convictions, the use of different tiers of sentencing, breach and remand trends. The chapter then explores how carceral policy has developed and changed over the years in Wales and the importance that was placed on obtaining and maintaining custodial places in Wales for Welsh-resident children. Findings on the views of practitioners towards the use of custody are presented and the various strategies that have been employed in each of the YOTs to minimise its use; influencing magistrates, promoting community alternatives and attitudes to breach. This concludes with an analysis of the impact of custodial measures in each locality. The chapter ends with a comparative examination of UKG and WG policy towards resettlement from custody.

Chapter ten examines 'children first', rights and risks. It starts by investigating factors that are relevant to youth justice policy in Wales, but could also have applicability in England. This is from the perspectives of the four participating YOTs: knowledge of the UNCRC, understanding of young people's 'entitlement' to services and participation as it derives from the UNCRC. The chapter presents a characterisation of 'children first and offenders second' from practitioner feedback and questions the extent to which there are differences between England and Wales in attitudes and values. The second part of the chapter explores tensions between 'children first' and risk, by focusing on attitudes towards risk identification and management, the *National Standards for Youth Justice*, the use of discretion and the Scaled Approach. It presents an analysis of practitioners' views about the application of payments by results to work with children and young people. The chapter concludes with a discussion of how some of the tensions explored, are reconciled (or not) by practitioners.

Chapter eleven is the final chapter of the thesis. It provides an overview of the previous areas of discussion and draws out the conclusions from the study. The chapter starts with an update on some of the developments that have been discussed in the main body of the research. It affirms that there are policy differences between England and Wales, that government relations matter and that Welsh context is important. It determines that the practice issues identified in England and in Wales were similar, that individual YOTs are the site of most cultural difference and local practice cultures are highly influential in how YOTs operate, with welfare and risk being accommodated in varying ways. The chapter concludes that practice in Wales is not directly influenced by WG policy or 'children first' in particular, although concern for 'best interests' is evident. Some suggestions for policy implementation are made, notably that 'children first' is a policy that should be known and understood by all agencies expected to deliver it, and not just by those in the justice sector.

Chapter Two

Literature Review

2.1 Comparative Youth Justice

Interest in international comparison has been influenced by increased globalisation, improved international communications and co-operation, interest in observance with international standards for the administration of youth justice and the desire for cross-national learning to inform the development of domestic justice systems (Hazel 2008). Distinction is made between macro comparative analysis (the systemic features) and micro analysis (at the intervention level). Studies include investigation into preventative practices that have impacted on the onset of crime or anti-social behaviour or provided effective responses to it, both internationally proven and regarded as promising within and across jurisdictions (ARCS UK 2008; Buckland and Stevens 2001; Hazel 2008; Stevens et al, 2006; Murphy et al, 2010). Other cross-national studies have examined what prevents particular types of crime, such as violent offending, notably Mihalic et al, (2004) in America and Hemphill and Smith (2010) in Australia. Additionally there has been some exploration of the influence of one jurisdiction on another, notably Muncie (2008), who suggests that curfews, electronic monitoring of curfews, zero tolerance and naming and shaming are all unwelcome imports from the USA to Western Europe (including England and Wales).

Cross-national studies recognise that the function and operation of youth justice systems varies internationally. There are some differences between academics in how they classify systems in different countries, with the main ones falling into two categories (Hazel 2008:6):

The most established differentiation between systems of youth justice around the world is that of welfare versus justice. Arguably, every other model of youth justice that has been developed in the literature can be traced back to variations on these two basic types of approach.

Broadly speaking, England and Wales, the USA and Australia are considered to be justice-focused and Belgium, Austria, France, Germany, Eastern Europe and Scandinavia to be welfare-orientated and Canada, the Netherlands, New Zealand and Scotland a mixture of the two (Buist and Whyte 2004; Cavadino and Dignan 2009, Hazel 2008; Stevens et al 2004). Welfare-based systems tend to concentrate on prevention, provide opportunities for early intervention and prioritise treatment over punishment. In contrast, justice-orientated

systems are punishment-focused and subordinate other needs over the prevention of offending (Hazel 2008; Cavadino and Dignan 2009). Any discussion of England and Wales is as a single jurisdiction and not as separate countries, so, by default, Wales is assumed to be justice-orientated. However some observers suggest this may not be the case as the WG has policies towards children and young people in trouble with the law that differ to that of the UKG (Goldson and Muncie 2006; Haines 2010; Muncie 2011).

2.2 The availability of literature on youth justice in Wales

Whilst literature on international comparisons has been growing, very little has compared the approaches of the home nations to youth crime (Muncie 2011) and that of Wales in particular (Haines and Case 2012). It is an area of interest due to the different degrees of devolution in Scotland (which has its own legal system), Northern Ireland (which has delegated authority from Westminster for justice matters) and Wales (which shares a criminal justice system with England). There is an expectation that Wales will simply follow UKG policy, but closer analysis reveals an alternative government philosophy about youth crime. Muncie (2011) states that whilst the youth justice systems in the United Kingdom have adopted common positions regarding prevention, early intervention, better co-ordinated and integrated provision, with elements of restorative justice and some degree of compliance with the UNCRC, they each have particular characteristics; Wales being the defender of children's rights and England the risk advocate. This notion has been taken further in the theory of 'dragonisation' (see section 2.9) as Wales has adopted a more welfare-led, 'children first, offenders second' approach to those in trouble with the law (see page 24).

There are a number of studies that discuss youth justice practice in Wales, but they are almost exclusively about single sites (for example Cross et al, 2003), with the exception of Field (2007) and Field and Nelken's (2010) research into practice cultures in YOTs in South Wales. There are studies that examine the ethos and practices of specific YOTs in England: Burnett and Appleton (2004), Ellis and Boden (2005) and Souhami (2007), but none (to my knowledge) that compare the philosophy, culture and practice of different YOTs, let alone ones that compare the practices and viewpoints of practitioners in Wales with those in England. Field and Nelken (2010) contrasted YOT practice in (South) Wales to another jurisdiction, albeit Italy, and found differences between the two countries were due as much to local characteristics and cultures as government policies.

There have been no published studies on the working practices of rural YOTs in Wales (largely west and mid Wales) - the same could be said for England – and, by default, no

comparative analysis. According to Minkes and Raynor (2013), the impact of rurality is a neglected area of research as there is more literature about probation practice overseas than in rural England and Wales. The same could be said of youth justice. There is a body of material on diversity and how culture influences practice, but this largely emanates from urban areas in England and concerns about the over-representation of black and minority ethnic populations in the justice system. There is a shortage of literature about youth justice practice in those areas of Wales where Welsh language and culture are particularly apparent (mid, west and north-west Wales). There is some literature on the impact of being a Welsh child incarcerated in England but this is limited (see for example Hughes and Madoc-Jones 2005; Hughes et al, 2012). A number of studies have been carried out on a single YOT, Swansea, which is regarded as taking a 'children first' approach to practice (Cross et al, 2003), as it 'claims to have articulated and delivered youth justice underpinned by national children's first principles' (Haines and Case 2012:215). It is proposed that what differentiates this YOT from others, are its discretionary and diversionary approaches (Haines et al, 2013; Hoffman and McDonald 2003), when compared to the risk-led and interventionist strategies adopted by other YOTs in Wales (and England) (Haines and Case 2012). The depth of study into this one area is not mirrored elsewhere in Wales.

The WG has not shown any interest in comparative analysis and whilst the YJB commissioned Hazel's (2008) cross-national study, it has not publicly explored differences between England and Wales, nor would it necessarily do so as they are a single jurisdiction. The limited academic literature on Welsh youth justice means that in order to explore where difference and similarity exist between the countries, the literature review has had to significantly focus on UKG and WG policy documents as well as examining material about youth justice practice cultures more generally.

2.3 UK Government - New Labour

Historically, debates in youth justice have concentrated on whether responses to children and young people who offend should be welfare or justice-led. The approach adopted has been contingent on the social, political, cultural and economic context at the time, with progressive and punitive turns being evident (Yates 2012). New Labour's approach was influenced by the findings of *Misspent Youth* (Audit Commission 1996), which described the youth justice system as ineffective, inefficient and needing significant overhaul. Proposals to address youth crime and anti-social behaviour were set out in *No More Excuses* (Home Office 1997) and the UKG pursued reform of the youth justice system in England and Wales, implementing its strategy through the Crime and Disorder Act 1998. The Act established the

YJB (for England and Wales) which would centrally determine what youth justice policy and practice looked like. It also led to the creation of YOTs.

The Act gave the youth justice system the clear aim of preventing offending, which would 'change the culture of youth justice', give it 'unity of purpose and coherence of effort' and concentrate it on delivering outcomes rather than questioning whether welfare or justice should be the predominant approach in youth crime prevention (Home Office 1997:1 and 7). This narrowed practice to that of managing the youth justice sentence, enforcing it if necessary and of providing interventions to address offending behaviour. It moved practitioners away from dealing with the 'whole child' (Cross et al, 2003:158) into practice that became characterised by less voluntarism and more prescription (Pitts 2008) and increased use of sanctions, surveillance and control (Field 2007; Hoffman and MacDonald 2011). The dividing line between social justice and criminal justice became blurred as services not traditionally associated with the criminal justice system were required to become statutory partners in YOTs (for example Education and Health) and to share the common goal of preventing offending (Pitts 2008).

Youth justice would sit within a national framework, with the YJB overseeing, but not directly managing YOTs (Souhami 2011). This reduced local authority influence over how youth crime was dealt with (Cross et al, 2003). The YJB introduced a performance management framework, with national standards, targets and key performance indicators that would examine the detail of YOT practice (Souhami 2011). The youth justice system became typified by bureaucratic processes and formulaic interventions, which eroded the use of professional discretion and limited the ways in which YOTs could operate (Pitts 2001 and Goldson 2010). It placed pressure on them to work in the prescribed manner as the system was supported by audits, the possibility of financial sanctions and left YOTs vulnerable to criticism when inspected by HMIP (Her Majesty's Inspectorate of Probation) if the prescribed processes were not followed. However, the YJB was also important for youth justice as it brought ring-fenced funding for the delivery of dedicated youth justice services (Souhami 2011), which resulted in considerable expansion of the system.

Philosophically New Labour viewed young people in trouble with the law in terms of the risks they posed, in what has been described as a 'deficit' model (Gray 2009). The notion of 'responsibilisation' was introduced and self-governance became a necessity, regardless of age, level of maturity or personal capacity to respond in the prescribed manner. Some commentators viewed this as focusing too much on the problems that individuals had created for themselves (Muncie 2002) and not on the solutions the State could provide. Nor

did it recognise that a significant proportion of young people in the justice system come from disadvantaged backgrounds and have to deal with difficulties that are way beyond their personal control (Pitts 2008; Gray 2009).

The notion of risk was placed at the heart of the youth justice system, initially in *Misspent Youth* (Audit Commission 1996) and its identification, management and minimisation became a central feature of the new system. One of the characteristics of the risk factor paradigm (as it has become known), is that it drew in not just those who had committed criminal acts, but those 'at risk of' offending as well (Muncie 2011). These included the 'near criminal', the 'possibly criminal', the 'sub-criminal' and the 'anti-social' (Goldson and Muncie 2006; Goldson 2010). The YJB introduced a threefold classification of the 'criminally inclined': those who: might simply re-offend, or commit serious harm to others and those at risk of re-offending who were themselves vulnerable to harm (YJB 2005a). Youth justice practice developed around the process of assessment, planning, intervention and supervision (APIS) using Asset, a YJB approved assessment tool to identify risk and protective factors that contribute towards, or shield young people from offending (Baker 2005). Practitioners provide a score (from 0 to 4) against twelve criminogenic domains¹ to determine the likelihood of offending occurring – the higher the score, the higher the probability. Criticism of Asset is that risk can be difficult to conceptualise and risk scoring is not necessarily meaningful (Briggs 2013). It treats each risk as discrete and cumulative and every domain carries the same amount of potential risk, not allowing one factor to be mitigated against another. Protective factors are subordinate to this and do not reduce the risk scores. Broader criticism of the risk factor paradigm is that it concentrates on a limited set of contributory factors to offending, ignores that it is often a symptom of wider welfare problems, fails to recognise structural influences such as poverty, social exclusion and economic disadvantage or to take young people's views of their own needs into account (Case 2006), all of which are more closely associated with welfare-orientated justice.

Despite these concerns, and building on an Audit Commission recommendation for a 'graduated approach' that tailored intervention more closely 'to the needs and risks of young offenders' (Audit Commission 2004:51), the YJB introduced the 'Scaled Approach' in 2009 (YJB 2009a). The Scaled Approach is a risk-led model that determines contact time (with the

¹ These are living arrangements, family and personal relationships, education, training and employment, neighbourhood, lifestyle, substance misuse, physical health, emotional and mental health, perception of self and others, thinking and behaviour, attitudes to offending and motivation to change. In 2009 four 'static' risk factors were added to the scoring matrix; offence type, age at first reprimand/caution/warning, age at first conviction and number of previous convictions

YOT) according to the assessed risk a young person presents – the greater the risk, the greater the contact and sanctions experienced. This raised concerns about how fair and rights-compliant the Scaled Approach would be, given the potential for young people who committed similar offences to be treated differently because of the subjectivity of assessment and disparity in the risk scoring in particular (Phoenix 2009: Bateman 2011a). It was suggested that young people experiencing greater difficulties would have increased criminal justice intervention and so risk would be conflated with welfare (Phoenix 2009:123) and enhanced and demanding interventions could increase the probability of breach (Bateman 2011a).

Finally, New Labour believed that early intervention was necessary to ‘nip offending in the bud’ (Home Office 1997:16). More regulatory practice drew increasing numbers of children and young people into the criminal justice system and escalated the likelihood of prosecutions and formal sanctions being used against them at an early stage of offending careers (Bateman 2013a). Further, those in the system would receive progressively rigorous interventions and punishments in an upward trajectory of increasing seriousness and intensity (Crawford 2009). The combined actions of a tightly prescribed and inflexible youth justice system, less tolerant attitudes (to young people) and more punitive treatment of those in trouble with the law, led some commentators to conclude that New Labour’s approach to youth justice was not compatible with a children’s rights approach (Goldson and Muncie 2006). It is characterised as representing a ‘punitive turn’ (Muncie 2008), and of creating a division between the deserving and undeserving, with those who offend by definition becoming undeserving (Goldson 2002).

2.4 UK Government – Coalition government

In May 2010, the UKG changed and a Coalition Government took office. From the outset it intended to make ‘a fundamental break with the failed and expensive policies of the past’ (MoJ 2010a:2) and this led to some significant changes. One of the main policies was to make financial efficiency savings in what become known as ‘austerity’ (Levitas 2012). This impacted on the justice sector as a whole and led to significant cuts in policing (Home Office 2010; Travis 2013) and the privatisation of part of the Probation Service (MoJ 2013a) into Community Rehabilitation Companies in 2014. YOTs were considered to ‘work well’ and were retained (MoJ 2010a:72), although not without reductions in their core funding and to many of the services they worked directly with (Yates 2012).

The YJB was scheduled for abolition, under the Reform of Public Bodies Act 2012 as part of the 'bonfire of the quangos' and a programme of public sector and civil service cut-backs. It was planned that its functions would be transferred to the MoJ and its regional offices closed (Public and Commercial Services Union n.d.). The rationale came from the UKG's localism agenda (House of Commons Justice Committee November 2011) and as Crispin Blunt (when under Secretary of State at the Ministry of Justice) indicated the YJB's success (Public and Commercial Services Union August 2011);

Over the past 12 years an effective system of multi-agency local youth offending teams has developed alongside a secure estate for young people. Given these changes, we do not believe that a separate body is required to provide oversight of the youth justice system. That is why we propose to abolish the YJB.

However, cross-party support from peers in the House of Lords prevented the abolition, arguing that a series of independent reviews had concluded the YJB had done a good job and there was no justification for dissolving it (HL Deb (28 March 2011) c956). However, criticism was levelled at the YJB for being overly prescriptive, of the need to improve the dissemination of 'best practice' to YOTs (House of Commons Justice Committee 2011:17) and to increase its attention on sector-led improvement (MoJ 2013b and 2013c). Since April 2011, all non-departmental public bodies, such as the YJB are required to undergo a Triennial Review to validate the need for their continued existence. The retention of the YJB was confirmed in its Review in 2013, which also made recommendations about its methods of operation and functions (MoJ 2013c). This Review was important as it affirmed the Coalition Government's commitment to retain a distinct focus on youth justice and a separate youth justice system. There had been concerns about youth justice being subsumed by adult structures such as the National Offender Management Service (NOMS) (ibid). Further, the Triennial Review noted the YJB would adopt rather than adapt MoJ policies to its area of work, thereby signaling a significant change in its *modus operandi*.

2.4.1 Freedoms and flexibilities

Breaking the Cycle (MoJ 2010a) set out the Coalition Government's vision for youth justice. There would be greater freedoms and flexibilities across the criminal justice system as a whole, which allowed more scope for discretionary practice (Ibid: 8 and 69):

We will provide frontline professionals with greater freedoms in how they manage offenders' and 'put more trust in the professionals who are working with young people on the ground'.

This also applied to the police who would have more choice of outcomes when dealing with low-level crime (which is discussed in chapter eight). The YJB's oversight of YOTs changed as 'lighter touch' performance management arrangements replaced managerialist control and micro-management of practice (Ibid: 75). There would be three key aims for the youth justice system (replacing the previous twelve): reducing the number of first time entrants, reducing re-offending and reducing the use of custody. The *National Standards for Youth Justice*, which set out tightly boundaried practice and processes that YOTs had to follow and which offered limited opportunities to take a flexible and needs-led approach to supervising young people (Eadie and Canton 2002), were re-issued in 2013, to allow more scope for greater use of discretion (YJB 2012b). This signified an important practice shift, although practitioner anxiety about applying greater professional judgement, as opposed to following standardised procedures, was noted by the YJB when introducing the new standards (YJ Bulletin 2013). The fundamental requirements of YOTs to identify and manage risk remained, as did the APIS approach to case management and the Scaled Approach.

One of the other areas the Coalition Government addressed was reducing the use of custody and reconfiguring the secure estate, at a time when significant falls had, and were continuing to be, experienced (Bateman 2013b). Since 2010/11, the YJB's budget for purchasing secure beds had fallen from £288m to £198m in 2013/14, because of the diminishing custodial population (MoJ 2013d). However, this still accounted for 64% of its youth custody expenditure (ibid), with remand costs accounting for 20% of this (House of Commons Justice Committee 2013). Although *Breaking the Cycle* (MoJ 2010a) discussed custody being used sparingly and as a last resort, it was economic drivers that were at the heart of achieving further reductions. Increasing local decision-making, sharing the financial risks (of young people entering custody) and the rewards (of them not) and the introduction of 'invest to save' models, that would reduce demand and deliver savings to the MoJ were all strategies that would be adopted.

A number of approaches were taken to achieve custodial reductions. Firstly, local authorities would bear the costs of remands in custody from December 2012 onwards and the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO 2012) introduced provisions that prevented courts from making a remand unless there was a realistic prospect of a custodial sentence ultimately being imposed. Secondly, YOTs were advised to set up compliance

panels to review young people at risk of breach and to prevent unnecessary escalation to custody, if other solutions could be found. Thirdly, Payments by Results (PbR) schemes were piloted in a number of areas (MoJ 2010a). Doncaster and Peterborough (adult prisons) measured re-offending (MoJ Statistical Notice n.d) and the Daedalus resettlement project (based in the juvenile wing in Feltham YOI) measured education, training and employment outcomes (IPSOS MORI 2012). In 2011 the Youth Reinvestment Pathfinder commenced with pre-set targets for participating YOTs (in three consortia and a single local authority) to make custodial reductions. Birmingham (the single locality pilot), withdrew in October 2012, as did the north-east London consortium in March 2013 (Puffett 2012 and 2013), because they failed to meet their targets because of the impact of the public disturbances in August 2011 (Wong et al, 2013). The MoJ have since indicated that 'a full PbR scheme' would be difficult to implement in youth justice and be overly burdensome to report on (MoJ 2013c:19), so grants remained as the main method of funding YOTs.

A significant element of the custodial plan would be to re-configure the custodial estate into 'secure colleges' which would deliver 'intensive' education during the period of detention. This was one of the top five priorities of the Secretary of State (MoJ 2013d:14), known as the *Transforming Youth Custody* programme. A number of contracts with secure estate providers (secure training centres and secure children's homes) were due for renewal in 2013 and 2014, which provided the opportunity to re-tender the education provision. Reconfiguration of the secure estate would focus on 'reducing costs through competition' and 'credible and affordable' proposals (ibid: 15 and 5). There were also inferences that PbR measures could be introduced to achieve 'better educational', rather than re-offending outcomes (ibid:24).

Finally, Police and Crime Commissioners (PCCs) were created under the Police Reform and Social Responsibility Act 2011. The PCCs would have responsibility for determining the strategic direction of their police force area, for holding the Chief Constable to account, for setting the police force budget and allocating local resources (Home Office 2012). The PCCs were likely to have an influence on youth justice, as they could have priorities that would compete or be in harmony with YOTs, the YJB and the WG and also because they could commission services. Indeed, the four Welsh PCCs are cited as respondents to the YJB's Triennial Review (MoJ 2013c), indicating an early interest in youth justice.

2.5 Contrasting the UK Government positions

When the approaches of both UKGs are compared, New Labour is characterised by its focus on addressing risk and offending behaviour, multi-agency rather than single agency responsibility, managerialism and centralised control of youth justice. The policies of the Coalition Government concentrated on making financial efficiencies, the expansion of ‘freedoms and flexibilities’ (which enabled savings to be made because of less prescriptive working methods) and the opening up of the justice sector to competitive markets and non-public sector organisations, to deliver reductions in offending and the prison population. The common features that both governments have are that their policies are characterised by neo-liberalism: the causes of crime being located with the individual, the erosion of welfarism and the subordination of social to economic policy (Gray 2009). The outcomes of these policies have been very different. New Labour massively expanded the machinery of youth justice and drew increasing numbers of young people into it at all levels (from its policies of intervention and the consequent effect of escalation). The Coalition’s contraction of funding, and therefore services, and the introduction of more flexible working methods led to a diminution of the system and ‘emptied’ it of young people. The current youth justice system is a hybrid of the risk-led approach that has more ‘freedoms and flexibilities’. Figure 2.1 summarises the main approaches of the respective governments and although the distinctions between them are apparent, the dividing lines on some issues are blurred. This is because some Coalition policies have their origin in the New Labour period, for example, the proposals to make local authorities responsible for the cost of remands were first mooted in the *Youth Crime Action Plan 2008*, and reductions in first time entrants to the youth justice system can be pre-figured from 2008, two years before the Coalition Government took office.

Figure 2.1: The comparative approaches of the New Labour and Coalition Governments to Youth Justice

New Labour	Coalition
Managerialism – performance targets, standardised processes, audits and prescriptive approaches (process-driven)	‘Lighter touch’ performance monitoring and increased use of professional discretion (freedoms and flexibilities). Measuring effectiveness through financial results (outcome driven)
Centralism	Localism – increased local accountability for delivering services and bearing the costs of local decision-making.
Creation of the YJB	Planned abolition of the YJB – later retracted.
Financial expansion – new programmes, initiatives and the commissioning of research to evaluate these approaches.	Austerity – local authority and public sector cuts to services - contraction of core and ancillary services, notably prevention activities (in England).

Central grant funding ring-fenced to youth justice services and reliance on the statutory sector.	Market testing of new approaches and new providers. Diversification from public sector delivery (eg PbR and the devolution of remand costs)
Intervention and escalation through the youth justice system – increasingly punitive responses.	Less rigidity and automatic escalation in the processing of young people from the point of arrest onwards.
Initial expansion of custodial provision and then progressive decommissioning.	Reform of the secure estate; secure colleges with an education focus, continued de-commissioning

2.6 The Welsh Government – devolution and a different direction

The National Assembly for Wales (NAW) and the Welsh Assembly Government (WAG) were founded in 1999 and took responsibility for the governance of Wales. From the outset, a key matter would be the extent to which policies in Wales would mirror those of the UKG and how far Wales could and would develop national autonomy. Both England and Wales elected Labour governments which might have suggested there would be similar ideologies; however this was not the case. Wales pursued a political agenda, based around social democracy, at a time when New Labour was breaking away from the principles associated with it (Davies and Williams 2009). A Labour government has remained in power in Wales (since devolution), either alone or in coalition with the Liberal Democrats or Plaid Cymru, which has given the policy base a degree of consistency.

Devolution brought about the political ambition to adopt a ‘made in Wales approach’ (Davidson 2001), to find Welsh solutions for Welsh problems, and to develop a ‘better’ Wales (Mooney and Williams 2006: 624). *Wales: A Better Country* (WAG 2003) described national characteristics as a strong sense of local community and heritage, bilingualism and rurality, which would be factored into policy formulation (Davies and Williams 2009). Wales would be an inclusive society and embrace the concepts of ‘openness, accessibility, transparency and representativeness’ (Day 2006:646). The WG would develop a set of rights that were free at the point of use, universal and unconditional, as ‘free services do bind a society together and make everyone feel they are a stakeholder in it, a point emphasised by Rhodri Morgan (when First Minister), in his ‘clear red water speech’ in 2002 (Morgan 2002), which set out the vision for citizenship in Wales and some key policy differences between England and Wales.

As the devolved government matured, strategic differences emerged between England and Wales and policies began to diverge. For example, the WG did not adopt the Connexions model of personal advisers as in England, preferring to retain the Careers Service and for

local authorities to 'extend entitlement' to children and young people by 'improving the support provided by existing services and improving co-ordination at National Assembly and at local level'. (NAW 2000:para10.5). The national school curriculum included the statutory requirement to deliver the Curriculum Cymreig which teaches pupils about the cultural, economic, environmental, historical and linguistic distinctiveness of life in Wales (Andrews and Lewis 2000). In December 2010, the WG announced it would not raise tuition fees (In the same way the UKG had) and would meet the extra costs of Welsh students attending any UK universities (BBC News 2010).

Youth justice is not part of the devolution settlement in Wales and remains a reserved function of the UKG, meaning policy is determined by Westminster and not Cardiff. The youth justice policies of the UKG (previously described) apply equally in Wales as in England. However, statutory services such as education, health, housing and social care, which can contribute to youth crime prevention or are necessary for the provision of services to young people in the justice system, are devolved. This has resulted in a divided position with YOTs partially comprising, and working with devolved services but sitting outside the policy responsibility the WG has for other child/young people-related activity. This has been regarded as an anomaly (Drakeford 2010) and an oddity (Dingwall 2009), as YOTs span child-welfare as well as criminal justice systems. However, policies towards youth justice started to develop that were rooted in the WG's principles of social-democracy and the ideology of inclusiveness and participation (Haines 2010). These were derived from the WG's adoption of the UNCRC and its youth policy *Extending Entitlement* (NAW 2000).

2.6.1 Children's Rights

The commitment to children's rights was evident from the start and a number of developments reflected the intention to incorporate the articles of the UNCRC into WG policy and ultimately in its domestic legislation. *Rights to Action* (WAG 2004) distilled the Convention into seven 'core aims'² and the Children Act 2004 placed a duty on all local authorities in Wales (including YOTs) to improve the well-being of children/young people in their area, based on these aims. Although not a national children's rights action plan that 'fully meets the UN Committee's standards', it was an important development in this direction (Save the Children 2011:4). The Rights of Child and the Young Person's (Wales) Measure 2011, placed a duty on Welsh Ministers to have due regard for the UNCRC and its Optional

² To have a flying start in life; a comprehensive range of education, training and learning opportunities; the best possible health free from abuse, victimisation and exploitation; play, leisure, sporting and cultural activities; treated with respect and have race and cultural identity recognised; a safe home and community; children and young people not disadvantaged by poverty.

Protocols when making decisions about introducing new legislation and policies or reviewing existing ones (Save the Children 2013)³. This applied to all ministerial functions from May 2014 onwards and would include any future legislation that related to youth justice.

The UN Committee on the Rights of the Child (UN Committee) investigates and publishes reports on compliance with the UNCRC and regards Great Britain and Northern Ireland as a single jurisdiction for this purpose. However devolution across the UK (and in other parts of the world) has led countries that have increased national autonomy to comment independently of the 'parent' government. The WG provided a separate response to the UKG in the 2008 reporting round, as did the UK Children's Commissioners and Save the Children, which hosted a third sector UNCRC monitoring group in Wales. These reports highlight national differences in rights-compliance (with the UKG) and comment on youth justice in Wales despite its reserved status. By responding to the UN Committee, the WG indicated it had a view on youth justice it wanted to express and also published a five-year action plan, *Getting it Right* (WAG 2009a), which set out how it would address the UN Committee's 2008 Concluding Observations. Priority 16 details a number of actions that included the delivery of joint YJB and WG objectives for youth justice.

Wales was the first country in the UK to appoint a Children's Commissioner, which was favourably noted by the UN Committee in 2002 (UN Committee Thirty-first session 2002). The non-devolution of youth justice caused tensions about the extent to which the Commissioner would represent the rights of Welsh children/young people in custody in Wales and in England (Welsh Affairs Committee 2001), because the powers of the Commissioner only cover devolved matters. It was ultimately decided that powers would not extend to children held in England, but the second Commissioner (Keith Towler⁴) indicated representations would be made to the WG about youth justice, if necessary, because of the:

Complex interrelationships between devolved and non-devolved elements of the youth justice system mean that it is unclear to children and young people whether they can contact the Children's Commissioner for Wales about issues to do with youth justice' (NAW 2009a:1).

³ The WG has also produced a Children's Rights Scheme which defines the roles and responsibilities of the WG and how it will implement its duty, in respect of the UNCRC.

⁴ Who also became the lead on youth justice for the four UK Commissioners.

2.6.2 Extending Entitlement

Extending Entitlement (NAW 2000) is one of the founding policies of the WG, setting out a vision of ten unconditional entitlements for all children and young people in Wales (aged 11 to 25 years) that are not means tested, regulated or rationed⁵. *Extending Entitlement* contains the WG's principles of promoting equality of opportunity and inclusiveness, and places the obligation on the providers of services to ensure needs are met and entitlements delivered (Haines 2010). In contrast to UKG policy, 'extending entitlement' does not differentiate between the deserving and the undeserving, remove welfare rights from those most in need of them, or separate concern about welfare from addressing offending behaviour (Drakeford 2001:40). The policy identified that many of the services and matters of importance to young people fall outside the WG's delegated powers (notably youth justice), but, where there are mechanisms to influence them, they should be used. *Rights to Action* (WAG 2004) confirmed that young people in the justice system should have the same entitlements as other young people in Wales, in being able to access services to address their needs and have the opportunity to develop crime-free lifestyles.

2.7 Comparing the UK Government and Welsh Government positions

The foregoing analysis demonstrates there are different approaches to youth justice within the jurisdiction of England and Wales; the social welfare model in which State welfare interventions are a feature of youth crime prevention (apparent in WG policy) and a justice-led risk-focused model that places little emphasis on rights and entitlements (the position of the UKG). This has led some commentators to suggest that Wales has more in common with Scandinavian countries, than the neo-liberal Anglo-American approaches to youth crime (Drakeford 2010). There are a number of points of divergence, which are summarised in figure 2.2.

⁵ Extending Entitlement sets out ten basic entitlements that include: education, training and work experience tailored to young people's needs, basic skills which promote social inclusion, opportunities to participate in volunteering and active citizenship, high quality, responsive and accessible services, independent careers advice and student support and counselling services, personal support and advice when needed, advice on health, housing, benefits and other issues, recreational and social opportunities, sporting, artistic, musical and outdoor experiences and the right to be consulted and to participate in decision-making.

Figure 2:2: The comparative approaches of the Welsh and UK Governments to youth justice

Welsh Government	UK Government
Social welfare orientation	Justice and risk based responses (New Labour and Coalition)
Prioritisation of prevention	Presumption of intervention (New Labour) Non-escalation (Coalition)
Universal services support prevention and rehabilitation	Punishment and enforcement necessary to curtail undesirable behaviour (New Labour) Greater use of professional discretion in criminal justice decision-making (Coalition)
Unconditional access to services	Deserving or undeserving of access to services (New Labour) Cuts to services and reduced availability of services (Coalition)
Rights and entitlements at the centre of policy	Little emphasis on rights and entitlements (New Labour and Coalition)

Increasing opportunities for diversion from prosecution, the broadening of community-based options and finding ways of achieving custodial reductions (Coalition Government initiatives) are nearer to the objectives of the WG than some of the New Labour initiatives were, albeit from a very different policy perspective. However, the concept of PbR, and the opening up of competitive markets in preference to public sector delivery are poles apart from the WG's philosophy of universalism. Critics of PbR suggest it side-lines children's rights in favour of fiscal benefits and expediencies to cut costs (Fox and Albertson 2011; NAJY 2011; Yates 2012), detracts from addressing developmental and welfare needs and an evidence-base regarding effectiveness (NAYJ 2011). These factors are in conflict with the WG's social-welfare approach. Also, Wales is not immune from the UKG's programme of welfare reform, which it is suggested will erode universal services and raise the thresholds for accessing them and is most likely to impact on children/young people the most (Yates 2012). This may ultimately be counter-productive to achieving reintegration and rehabilitation and conflict with the WG's policies of universalism.

One of the key differences between England and Wales is the centrality of children's rights in policy and legislation in Wales. In terms of the UKG, the New Labour government described its commitment to implementing the UNCRC as 'unwavering' (UKG 2007:3), but this was not always apparent in its policies. For example, the *Youth Crime Action Plan 2008*, which set out New Labour's youth justice strategy (towards the end of their administration), did not mention the Convention despite the document being jointly presented by the Department for Children and Families (DCSF) and the UKG's children's minister. The Coalition Government has also stated its intention to be fully committed to children's rights and the implementation

of the UNCRC, but will not incorporate it into domestic legislation (UKG 2010):

The UK does not incorporate international treaties directly into domestic law. Instead, if any change in the law is needed to enable the UK to comply with a particular treaty, the Government introduces legislation designed to give effect to that treaty.

At ten years the age of criminal responsibility is lower, in England and Wales, than the minimum 12 years recommended by the UN Committee (United Nations 2007). It has been proposed by the Children's Commissioner in England in 2010 (Daily Mail 2010), the Centre for Social Justice in 2012 (Centre for Social Justice 2012), and in a Private Members Bill in 2013 to the UK Parliament, that it be raised. The UKG has confirmed that it will not do this because (HM Government 2014:55):

The UK Government believes that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions

The WG has never indicated whether it would change the age of criminal responsibility or where the age should be set. Recommendations were made in 2010⁶ that it should consider the implications of doing so (NAW 2010a), but this would only be within the context of the devolution of youth justice (WAG 2011a).

2.8 The All Wales Youth Offending Strategy

Haines (2010) suggests there was a need to manage the different philosophical positions of England and Wales. One of the ways in which this was done was through the *All Wales Youth Offending Strategy* (AWYOS). Jane Hutt, (when the WG minister for Health and Social Services), launched the strategy in 2004 and said it was an opportunity to pull together the criminal justice responsibilities of the YJB and the WG's devolved duties for children/young people's social well-being (cited in Cross et al, 2003). In doing so, the strategy incorporated the different viewpoints, set out an approach on which there is consensus and laid the foundations for youth justice policy in Wales, incorporating how devolved services could support and contribute to the prevention of offending. The strategy has been described as an 'important symbolic statement of a partnership between the YJB and Welsh Government' that unifies youth justice in Wales and gives it a sense of direction (NAW 2009b: para 93).

⁶ In an inquiry into youth justice in Wales conducted by the NAW Communities and Culture Committee - one of its scrutiny committees

In many respects it is trying to do what Drakeford (2010:138) would later describe as tying up some of the 'ragged edges' in the arrangements between England and Wales. Viewed another way it could be seen as a means of reconciling the principles originally adopted by the WG in *Rights to Action* (WAG 2004) and those articulated in *No More Excuses* (Home Office 1997), New Labour's vision for the youth justice system. However, not all commentators agree on this. Williams (2007:278) suggests there has been 'limited accommodation of the development of a Welsh perspective' whereas Haines (2010) contends that whilst presented as a joint document, the AWYOS is neither a compromise nor alignment of the respective strategies, as different statements can be attributed to the differing perspectives of the YJB and WG, which are sometimes confusing and contradictory. For example, public protection, early intervention and appropriate punishment are YJB goals, whereas maximum diversion, minimal formal intervention and penal reduction are WG objectives.

Rights-based principles have been incorporated into the AWYOS and it is the statement 'children first, offenders second' that is regarded as signalling the biggest difference, when comparing the policies of England with that of Wales (Cross et al, 2003:158). Yet the commentary (in the AWYOS) is remarkably similar to some of the values expressed in *No More Excuses* (Home Office 1997), although they have been interpreted very differently. The AWYOS stated that there is no contradiction between protecting the welfare of young people in trouble and the prevention of offending and re-offending (WAG/YJB 2004). This mirrors *No More Excuses* contention that there is no 'conflict between protecting the welfare of a young offender and preventing that individual from offending again' (Home Office 1997:7). The Welsh position suggests that reduced offending would be a by-product of improved welfare, which the AWYOS branded as 'children first', whereas England separated addressing offending behaviour from concerns about welfare. From an English perspective, this is perhaps best characterised by Seaford (2001:464):

The child moves through Whitehall growing and shrinking like Alice. In the Department of Health she is a small potential victim, at the Treasury and Department of Education a growing but silent unit of investment, but at the Home Office a huge and threatening yob.

Clearly there is no such thing as a devolved child, but the Welsh approach implies that a Welsh Alice would not transform into the threatening yob the English Alice becomes according to ministerial responsibility. Rather, she would remain a child, irrespective of any criminal behaviour, whose best interests are at the forefront of any responses to her

behaviour and her views are taken account of in matters that affect her. This accords with the vision of what extending entitlement should mean in practice (NAW 2009b: para 107):

'Extending Entitlement' was a simple story in which the approach was not to look at hooded jobs aged 14, presenting all the problems that you are talking about today, but to look at sorted-out 24-year-olds. It said; let's look at the kids who are equipped for the labour market, engaged in civil society and responsible and decent sort of young adults. It encouraged us to think of the kind of things that led them to that point. What experiences and opportunities have they had? It is not just family and it is not just formal education; it is about youth services, international experiences, being away from home, membership of the young farmers' clubs and the Boys' Brigade....That is the 'Extending Entitlement' list.....That offer comes naturally to most children, because their parents help them to get it. That offer does not come at all to some young people, and public services need to reach out to them. When they do not, let us not be surprised that these kids become offenders, that they suffer from mental health problems, or that they become the homophobic, xenophobic, nasty little hoodies that the media gets great pleasure out of reporting.

After a five-year gap, a new delivery plan for the AWYOS was published in 2009. As with the original strategy it contained a number of priorities reflecting the policies of each government. For example, it referred to working with the Children's Commissioner for Wales, to 'mainstream and embed consultation with, and the participation of, children and young people in the youth justice system' (WAG/YJB 2009: 10), which is reflective of WG policy, whereas YJB priorities concentrated on implementing the 'Scaled Approach' and overseeing the introduction of the *Youth Crime Action Plan 2008* in Wales.

2.9. Welsh Youth Justice – 'dragonisation'

Devolution afforded the WG with the opportunity to develop its own strategies, but its policies towards children and young people in the justice system cannot be wholly distinctive because of their reserved status in the Welsh devolution settlement. The strategic position in Wales is one that has incorporated the central principles and approaches of the WG to youth justice, into a strategy for Wales that also reflects the central tenets and non-negotiable elements of UKG policy. As such it is a hybrid, as it does not fully accommodate what a rights-based youth justice system in Wales might look like.

The term 'dragonisation' has been used (by some academics) to characterise where there is policy divergence between England and Wales. It is a symbolic term that is derived from Y Ddraig Goch – the red dragon, the national symbol of Wales (Edwards and Hughes 2009). 'Dragonisation' was initially used to describe community safety activity in Wales, which took a 'more social, democratic and welfare-orientated' approach to crime and disorder than England, as it incorporated various WG crime prevention strategies (Edwards and Hughes 2009:80). The use of anti-social behaviour orders (ASBOs) was similarly 'dragonised', to the extent that the WG believed they should be used as a last, rather than first resort (when other measures had been tried and failed); a position that aligned to other WG policies of inclusiveness, although no claim of taking a rights-based approach has been made, despite concern about the use of ASBOs on children and young people (see chapter seven for further discussion).

Youth justice is also regarded as having been 'dragonised' because it contains specific features not found in English policy, notably the intention to treat young people as 'children first and offenders second' (WAG/YJB 2004; Haines 2010). This was a distinctly different objective to that of the UKG system (Haines 2010; Drakeford 2010; Edwards and Hughes 2009; Muncie 2011). The position was re-affirmed in a 2011 WG cabinet briefing which stressed the importance of addressing the 'holistic needs of young people, rather than their offending behaviour', compatible with the national priority of developing rights-based approaches (WAG 2011b:3). The policy rhetoric is therefore centred around 'children first'. However, many of the features of the AWYOS are common to England and Wales and it is the detail of what this difference means at a practice level, that may determine whether real disparity exists or not. YOT managers in Wales like the welfare orientation of the WG's policies and are supportive of them (Morgan 2009), but what is less clear is whether practitioners are aware of WG policies and whether and how they have impacted on practice and outcomes for young people.

2.10 The practice landscape in England and in Wales

While the WG may well want a certain type of approach to youth justice, the extent to which it can be delivered is debatable, particularly as a 'children first' approach suggests a different way of working. One of the indicators of national difference might be if there is more of a welfare-orientation in Wales, than in England. Some commentators have concluded there is a welfare culture in some YOTs in Wales (notably Cross et al, 2003 and Field 2007). However, when compared to the limited studies of YOTs in England, the findings are broadly the same, namely that despite a post Crime and Disorder Act 1998 shift from wider social

welfare-orientated practice to the narrower focus of addressing offending behaviour (the 'punitive turn'), concern for young people's welfare has continued to be important, is not ignored and well-being needs are addressed in tandem with offending behaviour (Burnett and Appleton 2004: Ellis and Boden 2005: Field 2007: Briggs 2013). Cross et al, (2003) suggested that practitioners (in Wales) subscribed, in one form or another, to a 'children first' approach and depending on their professional backgrounds and personal philosophies, would try and preserve this in practice. However, the limited evidence suggests that some English YOTs were also concerned with ensuring that welfare needs were met and did not believe they should solely concentrate on the narrow focus of only addressing offending behaviour. This does not suggest there is a clear-cut national divide and without more detail about specific YOT practices, it is not possible to deduce much more. Nor does the research base identify if there were YOTs in England and in Wales that became wholly 'offenders-first' or the probability that there were a mixture of the two approaches, with one or the other being dominant in individual YOTs. Further, it is not clear whether the claimed 'children first' approach in Wales is derived from 'top-down' implementation of national policy, or 'bottom-up' team culture. The gap between the development of the AWYOS in 2004, the publication of the AWYOS delivery plan in 2009, and its expiry in 2011 (see previous section), does not suggest that there has been a continuous promotion of the strategy in Wales, which may raise questions about how well it is known about, let alone adopted. Clearly an important step in policy implementation is how it is communicated to the relevant stakeholders and its status e.g. whether it is mandatory or advisory and what the accompanying mechanisms (or not) are that might help to embed it in practice. Further, both AWYOS documents set out the 'high-level' expectations of what youth justice should look like in Wales, but not the detail of how 'children first' practice might be achieved and what might more explicitly mark-out Welsh youth justice from that in England.

The conclusions about welfare-focus have largely been formed by asking practitioners whether it is important or not (with the usual response that it is) and not by examining changes in practice over time or by how welfare sits with other influences on practice culture. The philosophical base of youth justice shifted with the creation of YOTs when youth justice changed from being the sole responsibility of a single agency (children's services) to a multi-agency service (containing criminal justice and welfare agencies). This did not guarantee the YOT as a whole (police, probation service, health, education or social care) would have or adopt a social work ethic (youth justice's traditional base). Multi-agency working introduced different ideas about how best to address offending behaviour (Souhami 2007) and the assortment of agencies and individuals involved did not assure all would necessarily be pro 'children first' or understand what it meant. This is relevant because of where individual

beliefs are located on the welfare-justice continuum and the extent to which an ethos of care (addressing well-being) or compulsion (enforcement) or a 'children first' or an 'offenders first' approach is dominant (or balanced) in individual and collective practice.

The UN Committee advise that a rights-based youth justice system ensures the best interests of the child are a primary consideration and are protected by promoting restorative approaches and rehabilitation (United Nations 2007). If the 'best interests' principle is followed, addressing welfare needs should have primacy and practitioners should work with young people in a way that recognises youthfulness, the impact of maturation processes and the experiences that affect functioning, development and behaviour. Although youth justice workers understand their role is to help young people and not to punish them, it is multi-faceted and conflates the different paradigms (Souhami 2007). 'Help' can mean accessing the social resources that can improve the young peoples' circumstances, providing an individualised therapeutic input to address offending behaviour, whilst at the same time ensuring compliance and thereby exerting control to ensure 'risky' individuals are effectively supervised. This creates a tension as 'help' is not necessarily a benign or a welfare-orientated activity. Further, whilst welfare-based practice might be claimed, some of the actions practitioners take, whilst being justified as being in young people's 'best interests', have consequences that place them at risk of greater criminal justice sanctions, punishment and custody. It is possible to identify a number of trends.

Firstly, whilst UKG policy has been criticised for creating policies that differentiate between the deserving and undeserving and practitioner action can also mirror this. Field and Nelken's (2010) research (in Wales) found that a young person's eligibility for a welfare-based response from the YOT, may depend on the practitioner feeling they could work with them (because of the demonstration of a positive attitude) and a moral judgement being made about the offence (understandable in the circumstances). If this was the case, practitioners would explain offending behaviour in court reports as a consequence of deprivation and disadvantage and would minimise risky elements in personal circumstances. However, where practitioners were less well disposed to the young person, they would highlight 'deeds' rather than 'needs', by describing young people's backgrounds in terms of 'risk and hopelessness' (ibid:295-296); the hopeless being the uncooperative and the unremorseful and deprivation and disadvantage being presented as risks. YOT practitioners could therefore use their authority to be selective about what sort of service they would provide to whom, which could be highly influential on outcomes. This finding is relevant as the research was undertaken in Wales (as well as Italy) and demonstrates there was differential practice, some of which was not 'children first' in orientation.

Secondly, there have been shifts in practitioners' attitudes and actions towards breach and custody. This has been attributed to the increasing prescription of *National Standards*, which led to breach becoming an accepted (and unquestioned) norm in modern youth justice practice, rather than a rare aspect of it (Bateman 2011b). Further, the pre-YOT 'crusading zeal' to divert children/young people from custody and to utilise alternatives also become significantly diluted to the extent that actively recommending custody became an acceptable occurrence and any discernable evidence of an 'anti-custodial agenda' almost entirely disappeared (ibid:39 and 46). Practitioner partiality towards young people could result in custody being recommended if not directly, then by inference (Field and Nelken 2010) and irrespective of consequence. Souhami (2007:172) suggested this shift started from the presentation (by the YJB) of the detention and training order⁷ as a 'credible' option, which led some practitioners to believe custody could be a 'positive experience' despite evidence to the contrary.

Thirdly, practitioners may manipulate the system if they feel it is in the interests of welfare or justice. This occurs in use of Asset, the youth justice assessment tool, which requires practitioners to numerically score criminogenic risks and to develop intervention plans to address high-scoring areas (see page 12). Risks can be deflated to down-grade a problem or inflated to ensure needs are addressed, which is not how the assessment is intended to be used (Briggs 2013). Manipulating scores upward (often for welfare reasons) places young people at greater risk of receiving more contact with the criminal justice system than they require and of breach should they fail to comply (Phoenix 2009).

These findings suggest that, whilst there might be a policy aspiration to deliver a 'children first' service, the reality is more challenging and practitioners in Wales will experience the same tensions and challenges as their counter-parts in England. Despite wanting to retain a welfare-orientated approach, fully realising and assuring this, can be problematic because of the dominance of the risk paradigm, an inability to deviate too far away from the YJB prescribed methods of working (either by choice or constraint) as well as personal attitudes towards young people being supervised. It also suggests that concern about young peoples' well-being does not necessarily mean it will be preserved in practice, either because of beliefs about how practice should be conducted or because the youth justice system has driven practice in a particular direction, which may or may not be compatible with a 'children first' approach in either England or in Wales.

⁷ The main custodial sentence for young people under 17 years of age.

2.10.1 Swansea YOT

One YOT in Wales, Swansea, is considered by some, to have made a conscious decision to adopt a 'children first' approach. It is suggested this is because it took a tiered approach to anti-social behaviour (ASB) (Hoffman and McDonald 2011), compatible with the WG's view of how it should be addressed (House of Commons Welsh Affairs Committee 2005a).

However, the use of de-escalation, using ASB warnings in a constructive non-threatening way, using diversionary measures from ASBOs, making links to pre-court diversion and non-criminalisation (Hoffman and McDonald 2011), may not be markedly different strategies to those adopted in other areas of Wales and by areas in England that used ASBOs sparingly. The Bureau model of pre-court diversion (see section 8.4.2) was developed in Swansea (Haines et al, 2013) and introduced in Wales at a time when the criminal justice system was limiting the use of pre-court disposals, without any apparent scope to utilise non-criminal options. The initiative was YOT manager led and is claimed to be 'children first' in its intent and derived from WG policy, but it also has features in common with the pre-court diversion programme which operated in Northamptonshire, in England, prior to the Crime and Disorder Act 1998 (Kemp et al 2002).

It has also been suggested that the more discretionary and diversionary approaches of the 'children first', rights and entitlements-focused Swansea, have resulted in a lower rate of reconviction, than the risk-led and interventionist methodologies adopted by a neighbouring YOT (Haines and Case 2012). However as this study did not investigate what specifically marked Swansea out in differential practice, it is impossible to establish whether it is the influence of practice, or merely a reflection of trends for the particular year of study (a comparison of data between a 2008 benchmark and 2009 re-offending rates). Whilst the data demonstrate disparity between YOTs in performance, a lower re-offending rate is not conclusive evidence of a 'children first' approach as other factors will also have a bearing (see section 5.4). It is also noteworthy that since 2009, MoJ/YJB statistical data indicates the neighbouring YOT surpassed Swansea in reducing its re-offending rates. The finding is also potentially problematic as it undermines the notion of a universal 'children first' approach, although Haines and Case (2012: 215) have noted the degree to which it can be evidenced in practice across Wales 'is moot'. This suggests there may be a gulf between the WG's policy aspirations and what happens in practice (Morgan 2009 and Drakeford 2010), which may be relevant to how the *AWYOS* has been implemented in Wales.

Others have also commented on this, suggesting that the differences within countries may be greater than the differences between them, for example, Merthyr Tydfil in 'rights driven'

Wales is cited as having had one of the highest rates of incarceration in England and in Wales (Muncie 2011:52). Further regional variations in remand and custodial rates across Wales may be linked to differences in how YOTs are constituted, financed and managed, the practices they employ and the levels of poverty and deprivation that exist in the areas in which they operate in (Drakeford 2010). Morgan (2009) has made similar observations about youth justice in Wales noting that, although the rights-based approach is favoured, it has not resulted in better services or outcomes for children/young people when compared to England. This is attributed to Wales not having capitalised on the opportunity to make a distinct difference or doing as much as it could within the current devolution settlement, including the need for greater buy-in from all agencies to deliver the principles contained in the UNCRC.

2.11 The next stage

This chapter demonstrates there is divergence in the overarching policies of the WG and UKG policies towards children/young people in trouble with the law and similarity because of the framework within which they operate, the guidance they have to follow and the legislative requirement for multi-agency working. It has been proposed that England has had a 'slavish' adherence to UKG prescribed models of practice, whereas 'risk-led practices have been eschewed in Wales in favour of entitlements-based work' (Haines 2010:240), but the discussion outlined here suggests that the position is not as clear cut, with evidence of both methodologies existing in English and in Wales, albeit from a limited research base. The literature indicates the picture is complex with some YOTs in England and in Wales claiming their overall approach is welfareist, but there are tensions as their responses to young people do not always follow the principles of 'best interests' (because some have adopted inflexible approaches to breach and exhibit less concern about the use of custody).

'Dragonisation' suggests a 'children first' approach would have a closer alignment to pre-rather than post-YOT practice values, which would have been preserved despite the risk and standardised approaches which have become the current norm. It would also suggest that Wales might not have experienced the 'punitive turn' to the same extent as England or a shift in practice values to the same degree. However, as the current generation of practitioners have 'grown up' with risk-led practice, it is not necessarily something they want or can depart from, (whether in England or in Wales), because of UKG direction and their own preferences. Further, it is not clear whether a welfare-based approach (in the current context of youth justice) and a 'children first' approach are one and the same thing. Whilst the literature suggests that Swansea has taken a 'children first' approach in its diversionary

approaches, information is not available about the detail of practice with statutory caseloads and only on a limited basis about practice in other areas of Wales, so it is not apparent how far this extends.

The influences of practice are varied and although it might be expected that government guidance and policy would be one of the primary influences, there is no guarantee that this is the case. Hoffman and McDonald (2011) raised the question of whether the treatment of Welsh policy at a practice level is any different to the implementation of any government policy, irrespective of where it originates from, as it is not clear whether it is known about, supported, supplanted or mediated. The degree to which 'dragonisation' will take precedence over and dominate any other approach is likely to depend on the extent to which practitioners (and YOT managers) are knowledgeable about the WG's policies, how the WG (and YJB Cymru) have implemented them in Wales) and whether they have the autonomy and/or the creativity to deliver what is intended, without compromising the priorities of UKG policy and the YOT governance processes to which they are subject (such as YJB monitoring and HMIP inspection). A further issue, as Haines (2010:235) identifies, is that there are not only competing and contradictory philosophical bases to contend with, but also 'significant and different implications' for the way in which young people are worked with and the services that are provided to them, if a social welfare approach is to be genuinely delivered.

It is not obvious whether the WG approach to youth justice is well-known at practice level as the available research base is not extensive and it is not clear whether the question has ever been asked. This might suggest there is a lack of profile of the *AWYOS* in the practitioner community/youth justice sector or even if there is awareness, the principles it contains are difficult to put into practice in a criminal justice system that is fundamentally demanding something else. This suggests there are a number of areas for further investigation:

- Examination of the relationship between Wales and Westminster; the degree of tension or accord because of some fairly major policy differences and how this is managed.
- Investigation of a selected number of policy areas that Wales and Westminster have an interest in: the prevention of offending, pre-court diversion and the use of custody and resettlement.

- Examination of the profile of the youth justice system in England and in Wales and outcomes for young people to determine if there is any difference and if so, in what areas and why.
- Comparison of how practitioners in YOTs in England and in Wales indicate they respond when working with children/young people and whether this demonstrates there is a discernible 'children first' approach to youth justice in Wales.

Chapter three

Methodology

3.1 Determining the approach

There are two broad approaches to undertaking research; quantitative and qualitative. These methods are based on paradigms that make different assumptions about the 'social' world, how research should be conducted and what constitutes legitimate problems, solutions and criteria of 'proof' (Firestone 1987:16). Quantitative research is founded on the positivistic philosophy there are social truths that are detached from the beliefs of individuals and is an objective means through which causes and effects are measured, primarily through statistical analysis (Creswell 2009). The researcher is detached from the process of data collection, which minimises the risk of biased responses (Johnson and Onwuegbuzie 2004). Qualitative research investigates human behaviour, by examining attitudes, opinions and conduct. It is rooted in the phenomenological paradigm which holds that reality is socially constructed through individual or collective definitions of a given situation or experience, and it is by understanding the individual perspectives of these experiences that social occurrences are understood (Gray 2004). However, because the researcher has a central role in information gathering, data collection may be more prone to partiality than in quantitative analysis (Johnson and Onwuegbuzie 2004). That said the whole process of research has a degree of subjectivity, for example in the selection of what quantitative data to focus on, how it is interpreted and how phenomena are measured.

Consideration was given to the relative strengths and weakness of both methods and how they could be utilised in this research. A mixed methods approach was chosen as it uses elements of both quantitative and qualitative inquiry in a single study to answer the research question (Brannen 2005). It was selected because comparative research does not exist in an identifiable format, but draws on techniques from other recognised disciplines (Cliche 1995). The rationale for the methodology was also based on the following assumptions identified by Creswell (2009):

- inherent strengths and weaknesses in quantitative and qualitative approaches can to some extent be levelled out
- the combined approach is a means of overcoming intrinsic bias that stems from a single method, researcher or theory

- the validity of the findings can increase, if diverse data sources indicate the same conclusions
- the different research techniques can uncover different layers of social reality; and
- qualitative research adds depth to quantitative inquiries because it considers social meaning.

Quantitative methods utilise forms of measurement, in this case surveys, to poll opinion. However, relying solely on surveys is limiting as they are not generally designed to provide in-depth enough information (thick descriptions) to be able to fully understand personal experiences and motivations (Flick 2002; Johnson and Onwuegbuzie 2004). In order to capture this, a qualitative dimension was added, in the form of face-to-face interviews. This allowed the researcher to ask specific questions about 'Welsh youth justice', which when combined with the surveys, provided information from which it was possible to identify where there was agreement or contradiction in the feedback provided (Creswell 2009), and deduce whether youth justice in Wales is different (or not) from youth justice in England.

A further quantitative element was an original analysis of secondary statistical data published by the YJB and Ministry of Justice (MoJ) about the operation of the youth justice system in England and Wales, as this would highlight any differences in trends and outcomes between the countries. The final stage was to triangulate or merge the information gathered (Olsen 2004; Cameron 2009) from the surveys and interviews undertaken in four participating YOTs (two apiece in England and Wales) with the data from the YJB and MoJ.

3.2 Literature search

The purpose of a literature review is to identify related studies and literature (Creswell 2009), to establish what is known and unknown about a given topic (Maxfield and Babbie 2009), to provide a context for the new research and to determine where it will fit in with what has previously been researched and whether it is therefore worthwhile (Silverman 2000). The literature review should look at a selection of documents that contain information, ideas, data and evidence gathered from various perspectives (Silverman (2000) that will inform this first stage. Key words used in this search were 'young people', 'young offender', 'youth crime', 'youth justice', 'offending', 'Wales', 'England', 'government', 'devolution', 'policy', 'practice', 'prevention', 'diversion', 'custody', 'the secure estate', 'secure children's home', 'secure training centre' and 'young offender institution'.

Documents were sourced which mapped the development of youth justice in England and Wales, from 1996 onwards when the Audit Commission investigated the operation of youth justice and made recommendations, which influenced the formation of the 'new' youth justice system that emerged in England and Wales in 1998. UKG policy and consultation documents were examined for any specific references to Wales and for mention of how UKG-led policy initiatives might relate to the Welsh context. WG policy relating to children and young people generally and to those in the youth justice system specifically was a further source of information. The search included material from 1999 onwards (the year the National Assembly for Wales was founded) and included WG Cabinet papers, Select Committee and other Inquiries (reports and transcripts), WG commissioned research, published strategies and consultations where youth justice was the main focus. Literature that discussed the political and social context in Wales and the implications of devolution was also examined.

YJB annual reports, corporate and business plans were reviewed to pinpoint references to Wales and to provide information about the YJB's relationship with the WG and its activities in Wales. In addition, YJB bulletins⁸ were examined (from 2006 when first produced) as they highlight developments in England and in Wales that were relevant to the study. The YJB and related websites⁹ were a source of subject specific material, for example the *National Standards for Youth Justice*, case management guidance, effective practice information and YJB-commissioned research reports. Further sources provided information about YOTs and the youth justice system from newspaper articles, youth justice plans and HM Inspectorate of Probation core case and thematic inspection reports.

Other material included English language peer-reviewed academic journals, books and conference reports on contemporary youth justice policy, practice, projects and programmes. Literature was traced by interrogating the university's online library catalogue for academic journal articles, mainly but not exclusively through Sage Journals. Information was accessed through key word searches or by hand searching individual journals (such as *Youth Justice*) for relevant material. The websites of third sector organisations that publish youth justice research reports, articles or practice materials, such as the Howard League, Nacro, the Prison Reform Trust, the National Association for Youth Justice and the Standing Committee for Youth Justice were accessed for relevant material. Grey literature that had not come up through key-word searches was also found, mainly by 'snowballing' and reviewing the

⁸ These are fortnightly e-bulletins that contain YJB and youth justice-related news for YOTs, custodial establishments and the wider youth justice community.

⁹ The original YJB website was archived since 2010.

bibliographies and reference lists from publications that might contain relevant material. In addition the literature search examined academic text books and articles on research methodologies. This included guidance on questionnaire design, use of Likert scales, attitudinal surveys and ethical considerations. A number of websites that contained relevant resources such as www.ukdataservice.ac.uk were also accessed.

3.2.1 Government statistical information

YJB-published statistical data about the operation of the youth justice system is available. Since 2004/5 it has been possible to disaggregate Wales from England from YJB regional workload data¹⁰ (stored in Excel files) and to compare trends from the separate data sources about a number of areas of practice, such as the numbers of young people entering the system, the distribution of criminal disposals and the use of custody. This was used to make comparisons about performance in Wales as distinct from England, on a national and regional basis and at YOT level. In addition, statistical information was obtained about the population of 10 to 17 year olds in England and in Wales, in order to set the YJB data into national and local contexts. The population data came from the YJB Excel data tables, the Office for National Statistics and the WG's statistical database.

3.3 The YOT sample

The second part of the research involved identifying the research sites, preparing for the fieldwork and conducting it. As the basis of the research is a comparative study, the aim was to recruit two YOTs in Wales and two in England and to interview a cross-section of practitioners in each team about their experiences, perceptions and practices. Two YOTs were selected in each country, so that findings would not be limited to the views of a single locality, from which it might be difficult to draw conclusions.

The sampling was based on the qualitative premise that research is trying to find the answer to a particular question and it is therefore necessary to target those who have the requisite knowledge, experience and expertise to inform the answer (Cresswell 2009). There are various sampling strategies that can be employed including purposive sampling (research subjects are hand-picked on the basis of specific characteristics) and convenience sampling (Gray 2004). The method used in this research is purposive to the extent that YOTs were the homogenous unit of research. However, the study also utilised convenience sampling, targeting YOTs that were relatively easy to access because they volunteered to take part (when approached) and in some instances were in close geographical proximity to the

¹⁰ This has been compiled by the MoJ since 2010

research base. This was important as the researcher was working full time and had limited time available for site visits and travel. In selecting the sites, although initial consideration was given to matching the YOTs demographically (the YJB at one time published data on YOT families which allowed those with similar characteristics to be compared), this was ultimately not a primary concern because the study was focusing on views and attitudes, rather than performance-related activities, which would have made close-matching a more essential requirement.

HMIP (2009a:4) indicated the majority of YOTs in Wales are 'small in number in terms of population but large in terms of geographical area'. As a result it was decided to avoid the urban areas of Cardiff, Newport and Swansea. This was also because the metropolitan areas in England tend to be bigger than the main Welsh centres of population, and have different problems for example with gang-related crime. The YOTs that agreed to participate in Wales were based in:

- A small rural locality that has pockets of industrial activity and three main, but small population centres. The YOT operates from one of these localities (Wales A).
- A large rural county with several 'county towns' and a small widespread population (Wales B).

YOTs in England proved to be more difficult to engage with. All those bordering Wales were approached and although the initial response was poor, one agreed to take part, as a result of continued canvassing. For the second, a personal contact was approached in a more distant location (who agreed their YOT would participate). These YOTs were:

- In a large rural county in the south-east of England (200 miles from the research base in South Wales). The YOT has five operational bases spread throughout the county, two of which took part (England A).
- In close proximity to a large English city, in a mainly rural area and closer to Wales (65 miles away from the research base), (England B).

The population of 10 to 17 year olds in each of the localities is set out in figure 3.1, as are the criminal justice disposals for each of the YOTs. The population data is taken from the

YJB's YOT monitoring data and the disposals from the MoJ's youth justice statistical regional data for 2011-12.

Figure 3.1: Population of 10 to 17 year olds and criminal justice disposals for 2011-12

YOT	10-17 population	Pre court Disposals	First Tier Disposals	Community Disposals	Custody	Total	Rate of offending per 1,000 of the 10 to 17 population
Wales A	12,957	37	66	35	2	140	11
Wales B	12,829	110	78	27	0	215	17
England A	74,471	629	490	263	28	1410	19
England B	26,355	187	157	83	15	442	17
All England	4,766,873	31,235	38,512	19,943	4,406	94,096	20
All Wales	275,918	2018	2130	1029	208	5385	19

The English YOTs in the study are significantly bigger than the Welsh ones; England A is almost 10 times that of Wales B in terms of the throughput of cases. This reflects the wider picture that English YOTs are on average larger than the Welsh YOTs (see figure 5.3, page 64). However, when the rate of offending per 1,000 of the 10 to 17 year old population is examined, all of the areas are below the average rate of re-offending in their respective countries and for England and Wales as a whole. Wales A had a significantly lower rate than the other three, which are broadly the same, irrespective of their size and the numbers of young people in receipt of their services.

3.4 Participant sample

The literature does not provide a definitive answer on how many surveys and interviews to undertake in a given study. There are varying views about what the number should be, or whether there should be one at all, which depends on the context and scope of the research (Baker and Edwards 2012). A factor that can be influential is 'the level of available resource (time) in relation to the overall ambition of the research' (Flick and Salomon 2012:27). Five days were allocated to each research site: one day to attend a team meeting to introduce the research and four days to conduct the face-to-face interviews. The plan was to return to the YOT to carry out the interviews no later than two weeks after the team meeting, so the initial impetus was not lost. The target number of participants was around ten team members per

YOT (40 respondents). This was exceeded as 65 practitioners took part in the research, which comprised 68% of the YOT staff members in the selected sites that potentially could have participated. (See also section 3.8).

3.5 Ethics

Ethical approval for the research was obtained from the University of Bedfordshire's Research Ethics Committee. One of the reasons for considering ethics is to be able to anticipate and address any issues that might arise in the conduct of the research when identifying its scope, collating, analysing and writing up the findings (Creswell 2009). In addition informed consent must be obtained from research subjects and their anonymity and confidentiality must be protected throughout (British Sociological Association 2010). They should be provided with enough information (from the researcher) to enable them to know what taking part in the research will entail (Wiles et al, 2005a).

A combination of written and oral information was used to explain the purpose and to recruit participants. An information sheet about the research was e-mailed to the YOT manager (in each site) to introduce the study. The objective was to provide enough information to interest them in taking part (Wiles et al, 2005b). This was followed-up with telephone contact to discuss what involvement would mean. When the YOT managers (the gatekeepers) gave their consent to be a research site, a team meeting was attended to explain the purpose of the research to practitioners. This comprised a short verbal presentation, circulation of the information sheet and the opportunity to ask questions and address queries. Practitioners who agreed to take part were asked to sign a consent form and advised they could withdraw from the research at any stage and their contributions would be deleted, (none chose to pull-out). They were also assured they would remain anonymous in any outputs of the research e.g. the final thesis.

A further purpose of attending the team meetings was to distribute the surveys to those who agreed to take part. The manner in which surveys are administered will affect the response rate, with face-to-face surveys achieving the best returns (80/85%) compared to other methods (Survey Monkey 2011). Surveys were selected because they are easy to distribute, would not take significant time to complete and provided the researcher with immediate access to material, as the research subjects were asked to self-complete them in the research setting, to maximise the rate of return (McColl et al, 2001; Gray 2004). Practitioners were given the option of non-completion and provided with a stamped addressed envelope

with the relevant documents to return at a later date, if they preferred. None requested this and filled out the surveys at the time.

Interview subjects were identified at the team meeting and asked to indicate 'yes' on the consent form, if they were prepared to be interviewed. This assured anonymity in the group setting as it was anticipated not everyone would want to be interviewed. Interviews were arranged separately at a later date. In each YOT there were a small number of practitioners that declined or later dropped out, mainly because their schedules made it difficult, for example working part-time or because they could not fit in with the timescales of the researcher. A number of participants were also recruited following the introductory team meetings in Wales A and England B, via their operations managers, who circulated the information sheet to those who had not been able to attend. The researcher then liaised with them separately about their involvement. A final stage was to obtain agreement from all interviewees to record the face-to-face interviews.

Methods of preserving anonymity were used when analysing and writing up the findings to 'break the link between the data and identifiable individuals' (British Sociological Association 2010), to ensure participants were afforded anonymity and confidentiality throughout the research process. Once the interviews had been transcribed, respondents were given a separate identity in the interview transcripts, the surveys and in the written analysis. This was a coded label for each YOT and participant – e.g. WAP7.

3.6 Research Tools

Surveys were used to identify the influences on practice and as the means through which any differences in responses from those in England and in Wales could be compared. The prominent approaches to youth justice were identified from Cavadino and Dignan's (2009) analysis of models of youth justice, which were welfare, justice, minimum intervention, restorative justice and neo-correctionalism. The research tools were designed to incorporate these thematic areas. In terms of questionnaire design efforts were made to ask 'good' questions to obtain 'reliable and accurate' responses (Survey Monkey 2011) and to ensure questions were neutral, contained single (rather than multiple) concepts and avoided double-barrelled, negatively worded statements and technical jargon (Lietz 2008).

3.6.1 Surveys

The following surveys were developed:

- A ranking exercise which asked practitioners to list their views about different youth justice policies and practices. It consisted of ten statements (see appendix A), which they were asked to grade in order of the importance they would afford to them when working with young people; number one being the top priority and number ten having the lowest significance. For the purposes of analysis the rankings were reversed to avoid counter-intuitive interpretations. Respondents were asked not to give statements equal standing and to briefly comment on their choice of ranking, in particular what they had chosen to be at the top and bottom of the list and why. This produced an ordinal scale, and although it did not indicate the degree of difference between the statements selected (Bertram 2007; Johns 2010), it gave an indication of what each practitioner (and when combined, each YOT) regarded as the most important and least significant issues.
- The second questionnaire was an attitudinal survey that asked a series of closed questions. This is described as the 'should versus does' survey, which asked practitioners to express their opinions about various practices, using a Likert scale to rate what 'should' and 'what does' happen and to indicate the strength of their agreement/disagreement with each of the statements made (see appendix B). The methodology was based on Willison et al's, (2009) and Mears et al, (2010), studies of youth justice practitioners' views and attitudes to government and state policy (in the USA). Some of the questions asked in the ranking exercise were repeated and the range of questions expanded to incorporate ideas from Cavadino and Dignan's (2009) thematic analysis of youth justice. Additionally questions about children's rights were included because the UNCRC underpins WG policies relating to children/young people.
- Practitioners were also asked about their views on a cross-section of 'practice approaches' to youth justice, to find out what they thought about other factors that have a bearing on how the current youth justice system operates. For example the role of risk and the processes with which they are required to work. These questions did not lend themselves to a 'should versus does' response (see appendix C). Responses were measured using a Likert Scale.

The response options in the Likert Scale were 'strongly agree', 'agree', 'neither agree nor disagree', 'disagree', 'strongly disagree' and 'don't know'. As the questions asked were closed, which limits the extent to which explanations can be made (Yates 2004), space was provided for practitioners to offer open and unrestricted explanations to each of the responses they had selected.

3.6.2 Interview schedule

The quantitative surveys were supplemented with face-to-face semi-structured interviews to explore attitudes and view-points in more depth. There is no established convention amongst researchers about the ordering of quantitative or qualitative approaches in mixed methods studies and whether it should be done sequentially or concurrently (Johnson and Onwuegbuzie 2004), suggesting it is a matter for individual research design. As a result, it was decided to request survey completion in advance of the interviews because there was less chance responses would be biased by the interview content.

Qualitative research is based on the premise that individuals are best placed to describe situations and feelings in their own words (Silverman 2000; Yates 2004). The researcher uses the strategies of questioning and listening to explore the experiences, feelings and perceptions of the research subjects (Creswell 2009), without imposing their own views or being judgemental about the responses received (Gray 2004). The interviews were conducted in conversational style in order to develop rapport with the subjects and to encourage them to openly discuss their opinions (Ryan and Dundon 2008). The semi-structured interview also provided the opportunity to ask supplementary questions, to probe responses, to explore particular issues that arose, and to alter the sequence in which the questions were asked, depending on the direction of the interview (Gray 2004).

The interview questions covered a number of thematic areas that included the application of children's rights in practice, the links between YOTs and mainstream services, views on the use of custody and the influence of the YJB and the WG on policy and practice (see appendix D). There were a number of opening questions that asked respondents about their experience of working within the youth justice system and a closing question that asked them to add anything they felt was relevant that had not been covered.

All materials were piloted prior to use. The ESRC (n.d.) suggest that expert review, focus groups and cognitive interviews are some of the means by which this can be done. These approaches were applied to the interview schedules to test question clarity, the sequence (particularly of the face-to-face interview schedule), variety (to avoid unnecessary repetition)

and the appearance of the 'should versus does' questionnaire. As a result some amendments were made to all of the materials, notably the alteration and elimination of some questions and re-ordering the sequence in which they were asked. Part of the testing asked reviewers to complete the surveys so the length of time taken could be assessed. This was important as practitioners would be completing the surveys in a team meeting, so having an idea of the length of time needed was helpful when approaching YOTs with this request.

3.7 Data Analysis

The ranking exercise and survey results were imported into an Excel spreadsheet, in order to collate the responses of individual workers and to be able to evaluate the combined YOT and national response. Excel allowed the data to be manipulated to provide numerical or percentage breakdowns of the information gathered, which assisted in the process of analysing the outcomes and discerning trends or otherwise in the responses given. The interview transcripts were coded, to organise and classify the responses and to identify recurring concepts and themes (Yates 2004), in order to determine the structure and content of the thesis. The subject matter is reflected in the chapter headings and sub-headings and the key concepts are discussed within the context of the similarities and differences between England and Wales.

3.8 Surveys returned and interviews obtained

The number of practitioners who participated in the research is set out in figure 3.2. It should be noted that with regard to England A, although the total size of the service was 54 staff, the interviews were conducted with two of the YOT's five teams, both of which directly supervised young people subject to community and custodial sentences.

Figure 3.2: The proportion of practitioners in each YOT that participated in the study

	Team Size	Participating Practitioners	Percentage
Wales A	25	18	72%
Wales B	26	14	54%
England A	22	17	77%
England B	22	16	72%

Figure 3.3 provides information on the response rate for each of the research tools. Overall 39 staff (60%) completed all three elements. The distribution of responses was evenly balanced between England (n=85 data sets) compared to Wales (n=83).

Figure 3.3: The response rate from each YOT to the surveys and interviews

YOT	Ranking exercise completed	Should-does questionnaire completed	Interviews completed
Wales A	16	16	11
Wales B	13	13	13
England A	16	16	14
England B	13	14	12
Total	58	59	50

The respondents were made up of a cross section of core YOT staff and allied services, in aggregate they represented:

- 11 = YOT and operational managers.
- 27 = case workers responsible for managing community and custodial orders. They were qualified and unqualified workers that included social workers and probation service trained staff as well as those from other disciplines such as youth work or residential care.
- 12 = statutory partners; health, education and seconded police and probation officers.
- 10 = other specialists covering a range of service inputs; substance misuse, restorative justice, bail and remand management, intensive supervision and surveillance, referral orders, and victim liaison work.
- 3 = administrative workers.
- 2 = youth justice support workers.

3.9 Limitations

There are limitations to the research that need to be acknowledged. One of the considerations is the extent to which the acquired knowledge can be generalised to other people (practitioners) or settings (YOTs) and the extent to which it may be unique to those that participated in the research study (Creswell 2009). One of the weaknesses of qualitative research is that it can be prone to the personal biases of the researcher and to subjective assessment (Creswell 2009). Both of these issues have relevance to this study. In the first instance, the study relied on convenience sampling, and although this ensured the requisite number of research sites and interview subjects were obtained, it did not guarantee how representative they were of the wider YOT population. The study targeted youth justice practitioners who it could reasonably be assumed, would have an informed opinion about the subject they were asked to comment on, although depth of knowledge and views would vary

depending on the specific questions asked. As over 50% of team members targeted in each YOT participated (figure 3.2), it is likely that the sample is representative of the team as a whole (this is also discussed in section 6.2). A further consideration was the extent to which the findings can be generalised to all YOTs, because four YOTs is a very small proportion of the total number:

- 11% (n=2) of the YOTs in Wales (n=18)¹¹
- 1% (n=2) of the YOTs in England (n=140)

On this basis alone, it is difficult to generalise all of the findings, however the study did reveal some interesting observations about youth justice practice, which are likely to have a broader resonance beyond the research cohort, which is also commented on in chapter 11. It had been anticipated that if the two English YOTs were close to the Welsh border, there would be practitioners that had worked in YOTs in both countries and could therefore provide a comparative account of their experiences. The likelihood of this diminished as one of the English YOTs was 200 miles away from the research base in South Wales. However, there were a small number of practitioners (in Wales B and England B) who had worked in both countries, although not necessarily on the England/Wales border. They provided some useful observations about differences in practices and preferences of approach, but not necessarily fundamental differences between England and Wales. Although some of the practitioners had worked in both countries, it was prior to the Crime and Disorder Act 1998 and therefore before the operation of the current youth justice system, a period which has not been examined by this study. It was also before devolution in Wales and the development of the 'children first' agenda.

Finally, with regard to bias, the researcher started the study whilst working in the third sector and has since become an employee of the YJB. Critical analysis of UKG policy is an important aspect of this research and whilst every effort has been made to retain this focus, it is possible the researcher's view may have become moderated because of the change in employment. However, all the fieldwork was completed prior to the start of the new employment in May 2013, which assured impartiality when asking questions about the influence of the YJB.

¹¹ This was the total number throughout the fieldwork period, although the number of YOTs in Wales has since reduced to 15, due to a number of mergers in 2014.

Chapter Four

The Wales and Westminster Interface

4.1 Context

It has been suggested that by not tying up the loose ends of the arrangements relating to youth justice in Wales, which devolution would have done, its governance requires the close co-operation of the UK and Welsh governments and a process of continual negotiation between them (WAG 2007a; Drakeford 2010). This can present challenges because UKG policy is not always directly portable to Wales without consideration of the Welsh context. It also raises the question of whether the differences in philosophies and approaches and the tensions this can present have been accommodated.

In 2004 the Richard Commission examined relations between Wales and Whitehall. It reported that from the Whitehall perspective 'devolution had become a settled part of the political landscape' and worked well, although Wales was a 'junior partner' in the arrangements (Richard Commission 2004:164). From the Cardiff viewpoint, civil servants in London did not always understand the differences between England and Wales, and although Whitehall had become more conversant with the requirements of devolution it did not guarantee the different policy landscape in Wales would automatically be taken into account. The Commission indicated Whitehall needed to be consistently mindful of differences in Wales and Cardiff had a reciprocal role in ensuring its interests were represented in London and UKG policies were understood in Wales. It appears youth justice was not immune from this, as Howard Williamson (YJB board member for Wales from 2001 to 2009) explained (NAW 2009b: para 88):

When I joined the YJB, it was dreadful—it paid no attention to the Welsh context. I read documents that referred to the Connexions service and the substance misuse or drugs strategy, which was an English strategy. By the time I left, any official of the YJB would have been hauled over the coals had he not, at the very least, had a section on the implications or issues for Wales. It is a mixed story. Some officials became more informed about the Welsh context and some did not. However, everyone had to try.Wales is not a region, but a country.

4.2 Taking Wales into account

The degree to which policy imperatives that emanate from England fully take Wales into account is debatable, despite Williamson's assertions. Edwards and Hughes (2009:77) suggest that in policy descriptions England often subsumes Wales and the 'and Wales' element tends to be ignored. This is because UKG policy is not always transferable in the form it is conceived or it is too urban-centric to be relevant. Initiatives such as the knife crime action plan and the tackling gangs action programme (H M Government 2008) had little applicability to Wales, as these types of crime do not feature significantly in the Welsh criminal justice landscape (or for that matter the largely rural areas of England), as they are mainly concerns of some of the major cities in England.

Other policies make passing reference to Wales, generally with an indication there will be close working with the WG to implement what is appropriate to Wales, without providing any of the finer detail. For example, the *Youth Crime Action Plan 2008* (H M Government 2008) would require a 'separate and distinct' approach because of the devolved responsibilities of the WG (YJB 2008a:5), but did not elaborate further. *Breaking the Cycle* (MoJ 2010a), indicated views from Wales would be welcomed about reform of the criminal justice system, but similarly, the UKG's response to the consultation did not provide any further detail about how this would be taken forward. (MoJ: 2011). A more recent example is *Transforming Youth Custody*, the UKG strategy for reconfiguration of the secure estate into secure colleges (MoJ 2013d). This could have had implications for Welsh children/young people, depending on where the colleges were located and if they would be placed there. The strategy advised any new arrangements would have to meet the needs and demands of both England and Wales, and whilst it recognised the different position in Wales, it did not offer any proposals or solutions. It did however identify that establishing secure colleges in a devolved setting would present its own challenges (MoJ 2014a: para 22):

The devolved responsibilities of the Welsh Government in relation to education¹², health and wider children's services will require careful consideration in the development of any Secure Colleges in Wales. We are also aware of the particular cultural and language needs of young Welsh offenders. We will continue to work closely with the Welsh Government on the implementation of the Secure College model in Wales.

¹² Section 18A of the Apprenticeships, Skills, Children and Learning Act 2009 set out the provision of education for persons subject to youth detention, which gives local authorities this responsibility. However, this would require secondary legislation to enact and to date this has not occurred in Wales, so the provision is delivered through NOMS/YJB contracting arrangements.

These examples suggest there may be no clear idea at the point of policy development of what the possible implications will be for Wales and negotiations about applicability and implementation take place after formulation and not before. Youth justice activity in Wales makes up a small proportion of the total England- and Wales-wide picture. The MoJ /YJB statistical data for 2012/13 (regional Excel tables), indicates the Welsh proportion of the total youth justice cohort, is 5.8% of arrested children/young people (table 1.3 gate way to the youth justice system), 6.6% of first time entrants (table 2.6 first time entrants) and 4% of the custodial population (table 7.7 young people in custody). This may explain why Wales does not always receive equal footing in policy development.

4.3 The YJB and Welsh Government relationship

An area worthy of examination is the relationship between the WG and the YJB. It seems there may have been tensions that took some time to iron out. Williamson comments when he joined the YJB in 2001 there was ‘considerable antipathy’ between the WG and YJB, however relationships improved over time and by 2009, the partnership was ‘pretty integrated’ (NAW 2009b:para 90). This was a view echoed by Edwina Hart (when Welsh Minister for Health and Social Services) who advised in 2007 that every opportunity was taken to ‘make the YJB fully aware of the differing perspective taken in Wales on many aspects of child welfare and education’ and later described the YJB as ‘now fully committed’ to developing policies in Wales which are parallel and equivalent to that in England’ (WAG 2007a:2). By 2009 Hart was saying that although not a ‘perfect’ working relationship, relations with the YJB had improved (NAW 2009c: para 34).

The appointment of a YJB board member for Wales was intended to help to raise awareness of and improve the UKG’s knowledge of the Welsh context, the differences brought about by devolution and to ensure they were taken into account in policy development. Additionally the board member’s role was to work with stakeholders in Wales to develop ‘Welsh youth justice’¹³. Prior to this, the chair of the YJB and nominated board members took ‘particular interest in Wales’ (YJB 1999:38), but this does not suggest a focused endeavour to bring together the Welsh and YJB viewpoints. Dr Howard Williamson was the first YJB member for Wales to be appointed and Frances Done (when chair of the YJB) credited him with ensuring the ‘YJB had developed a successful relationship with the Welsh Assembly Government and youth justice agencies throughout Wales’ (YJ Bulletin 2008a). Williamson illustrates this further at the point of his departure from the YJB (Williamson 2008):

¹³ This point was confirmed in a discussion with John Drew, (ex-Chief Executive of the YJB).

‘In Wales, for which I took a regional responsibility from the start of my appointment, I pressed for a more concerted effort to ensure parallel and equivalent development to what was going on in England. I wasn't concerned about mirror images being produced in the devolved functions of the Welsh Assembly Government but I did press for the youth offending teams in Wales to be operating on a level playing field’.

In November 2009 a review of the YJB's governance and operating arrangements was announced by the MoJ and the DCSF. It was the first time the YJB's role, relationships and powers had been examined since it was established in 1998. In terms of findings, the report, *Safeguarding the Future*, advised that the YJB had responded well to the ‘challenges and complexities of operating within a devolved administration’ (DCSF 2010:13) and although it made significant comments about the relationship of the YJB to UKG departments, the report did not provide any further detail about Wales. This might simply mean it was not examined, which would seem to be a fairly major omission given it is the YJB for England and Wales and because there had previously been tensions in the relationship.

There are relevant structures, arrangements and relationships in Wales. The AWYOS was put in place because of the challenge of delivering youth justice bilaterally. The Wales Youth Justice Advisory Panel is a cross-government group, comprising expert membership from the English and Welsh government departments, national and local agencies. It was established to support the implementation of the AWYOS and to consider how WG policies impact on the delivery of youth justice in Wales (YJB Cymru 2012). There have been two YJB members for Wales to date¹⁴, who have been described as having views that ‘are very much in line with that of the Welsh Government’ (NAW 2009c: para 17), suggesting cross-government alliance and agreement. The YJB has a national team based in Swansea that included a joint policy officer funded by the YJB and WG based partially in both organisations (until April 2013). Further, the Director of YJB Cymru undertakes a policy development function in Wales, because of the devolved context (NAW 2009d).

The YJB's Triennial Review in 2013 (MoJ 2013c) provided more explicit information about the relationship with the WG. It scrutinised its activities in more detail than *Safeguarding the Future* had, because the Review concentrated on the question of the YJB's continued existence. Critically, the WG indicated strong support for YJB Cymru, stating it was ‘fundamental’ to some of its recent activities and any change of status would be a retrograde step if the YJB's function fell entirely under the UKG policy directive, as opposed to the joint

¹⁴ Howard Williamson from 2001 to 2008 and John Wrangham from 2008 to the present time.

arrangements with the WG because of devolved responsibilities' (MoJ 2013c: para 26). The WG regarded YJB Cymru as essential for the Cardiff/Whitehall interface, confirming the bilateral relationship was now on a very different footing. Support for the YJB appeared to be greater in Wales than in England and the Triennial Review noted that relations at all levels were regarded as positive. The YJB Cymru *Blueprint for Effective Practice* (YJB Cymru 2012) describes what the formal arrangements for working with the WG are, which includes having a joint delivery plan for Wales, collaborative monitoring of youth justice outcome information and joint governance and oversight of youth justice delivery. In addition the *Triennial Review* refers to a memorandum of understanding between the two governments (MoJ 2013c).

The (improved) relationship did not necessarily mean there was complete convergence in thinking between England and Wales. As Edwina Hart indicated there could still be disagreement with UKG policy (NAW 2009c: para 34):

'I do not always agree with UK Government policy in these areas. For example, we have grave concerns about fixed penalty notices and such issues. The UK Government over-emphasises some issues that I would not when, for example, trying to deliver children back into society'.

The WG has stressed its right to be consulted on proposed changes to the youth justice framework and to make representations to the UKG on such matters (WAG 2007a and 2007b). A number of differences of opinion about UKG policy can be pinpointed. For example, the WG disagreed with the use of anti-social behaviour orders, as anything other than as a last resort (ibid and House of Commons Welsh Affairs Committee 2005a and 2005b). There was opposition to the creation of PCCs; although the WG confirmed it would work with them, when it became evident the appointments would be made (WG 2012a). There was also disagreement with the privatisation and outsourcing of part of the Probation Service into Community Rehabilitation Companies, as the WG would have preferred delivery to remain within the public sector with support from third sector organisations (WalesOnline 2013a).

4.4 The YJB's role in Wales

One of the reasons why the relationship with the WG has improved is because the YJB has increasingly taken cognisance of the Welsh context, as evidenced by comments in its annual reports, corporate and business plans. For example the 1999 Annual Report does little more than describe a visit to Wales of various YJB board members, 'to listen to the views' of those

working in youth justice (YJB 1999:38). By contrast, the 2003/4 Annual Review (YJB 2004:2) commented on the development of the AWYOS and the creation of a consultative committee (which became the Wales Youth Justice Advisory Panel) to ensure the YJB took account of the Welsh context in its activities. There is also mention of the need for developments in Wales to be 'parallel and equivalent' to that of England, terminology also found in the Richard Commission report on devolution.

By 2007, the YJB referred to the development of a 'bespoke' approach, allowing it to meet its statutory responsibilities appropriately in the context of 'Welsh government, culture and language' and for the first time makes specific reference to what this meant (YJB 2007:19). For example, the importance of aligning YOT planning processes to those of local authorities in Wales and the 'seven core aims' of the WG (see page 19). The YJB acknowledged there was divergence in policy between England and Wales and the importance of adopting strategies that would take 'proper account' of the Welsh context' (YJB n.d.c:18).

We have worked with partners to develop the *All Wales Youth Offending Strategy*, the Wales Youth Justice Committee¹⁵ and associated pan-Wales forums, as mechanisms to foster strong working relationships between ourselves, Welsh Assembly Government officials, YOTs, providers of secure accommodation, and the range of statutory, voluntary and local government stakeholders. Our challenge is to develop this work with partners in Wales so that our statutory position, resources and expertise are deployed to maximum effect in the context of devolved policies, strategies and structures.

Indeed, 2008 appears to be a watershed. For the first time the YJB issued separate guidance for Welsh YOTs for the production of their annual youth justice plans and clarified that one of its roles in Wales was to counsel the WG on 'the delivery of devolved elements of youth justice' (YJB 2008b:7). The YJB described having a 'shared agenda' with the WG (YJB 2008c:12), of a decision being made to work explicitly in Wales through the vehicle of the AWYOS (YJB 2008b) and of having a role in overseeing the delivery of the AWYOS objectives largely through the Youth Justice Committee for Wales (YJB nd.d). Prior to this, the YJB commented on the existence of the AWYOS and participating in its development, but did not describe any particular interaction with it. In 2009 the AWYOS was reviewed and a set of joint priorities emerged for the following two-year period (WAG/YJB 2009:3) that aligned the position of the respective governments.

¹⁵ The former name of the Wales Youth Justice Advisory Panel

4.4.1 YJB activity in Wales

Key deliverables start to appear for Wales in the YJB's 2008/9 business plan, which have become progressively more explicit and provide an informed picture about the YJB's work in Wales. They divide into a number of broad areas;

- Joint strategic work with the WG.
- Work specifically at the devolved service interface.
- Development of initiatives that are specific to Wales.
- Determining how UKG policy would be implemented in Wales.

There is a degree of overlap between them, but close analysis of a selection of the deliverables illustrates what the priorities in Wales have been. These activities are in addition to the YJB's core activities of monitoring YOT performance, commissioning and de-commissioning places in the secure estate, developing and disseminating effective practice and in recent years, delivering significant cost reductions to the MoJ (see YJB 2011a onwards). The joint strategic work is primarily targeted at overseeing the delivery of the AWYOS, in the main through the Wales Youth Justice Advisory Panel (see for example YJB 2010a). Other strategic work includes providing advice, assistance and support to the WG with regard to its priorities, such as contributing to the NAW's Communities and Culture Inquiry into youth justice in Wales (YJB 2011a) and the need for youth justice legislation in Wales (YJB 2012a). With regard to the devolved interface, activities included working with the WG to assist in the development of Integrated Family Support Services (IFSS)¹⁶, developing a joint plan on speech, language and communication and improving young people's access to health services in Wales (YJB 2010a; 2012a and 2013a).

Initiatives specific to Wales included the development of a wide-ranging agenda regarding resettlement with the WG (YJB 2013a) and plans to develop a Welsh language action plan for Welsh young people in secure establishments; a service specification for Welsh young people held in custody; and improving the working arrangements between probation and youth justice services (YJB 2010a; 2011a and 2013a). Implementing UKG policy and legislative change in Wales, included relevant elements of the *Youth Crime Action Plan* (YJB 2010a), *Breaking the Cycle* (YJB 2011a), facilitating a Wales-wide approach to the use of out-of-court disposals, arising from the LASPO Act 2012 (YJB 2012a) and working with the WG to ensure plans to reform the secure estate took account of the needs of children and

¹⁶ IFSS provides services to families where parents have substance misuse problems that affect the welfare of their children

young people from Wales (YJB 2013a).

4.5 Welsh Government policy developments

Whilst the activities of the YJB in Wales need to mirror its statutory functions and be responsive to UKG policy changes and initiatives, those of the WG are to ensure there is effective interaction between devolved services and youth justice. A central thrust of WG policy is to improve the linkages across a number of policy areas to provide 'a clear signal that this [youth justice] is a priority' (NAW 2009c: para 30). This has been pursued in a number of different ways:

- Through grant funding to YOTs and their partners.
- By monitoring the response of (some of the) devolved services to young people in the youth justice sector.
- Commissioning expert third sector support to YOTs in Wales and the WG.
- Exploring the need to strengthen existing legislation or to introduce new provisions to ensure YOTS are supported by devolved services.

One of the ways the WG can direct what it wants to happen in the youth justice sector is through the Youth Crime Prevention Fund.¹⁷ It was introduced in 2003, to support the implementation of the AWYOS and made available to community safety partnerships and YOTs for youth crime prevention activities. It provides approximately £4.5 million of funding per annum and is an important source of finance for youth justice in Wales (see also the next chapter). In 2007 it supplied almost the same level of contribution to targeted YOT prevention work (in Wales) as the YJB (Ashford 2007).

The relationship of statutory services to youth justice and the support they can provide to young people is fundamental to the WG's approach. The expectation placed on mainstream agencies to engage with the youth justice sector, may be stronger in Wales than in England, because of the WG's commitment to the delivery of entitlements (see section 2.6.2). Whilst YJB performance indicators in England had been reduced from twelve to three measures (reducing the number of first time entrants, re-offending and the use of custody), an additional three were retained in Wales in order to monitor the access of young people in the justice system to suitable accommodation, admission to education and access to substance misuse assessment and treatment (WAG/YJB 2009). It is noteworthy that given the problems in accessing and the adequacy of Child and Adolescent Mental Health Services

¹⁷ Formerly known as the Safer Communities Fund.

(CAMHS) (Nacro Cymru 2009a; Morgan 2009; WG 2012b), the lack of an indicator for this area, is perhaps a surprising omission for a 'children first' agenda.

The WG also commissioned Nacro Cymru for a number of years (until April 2013) to provide expert support to YOTs in Wales and to undertake research into the connections between devolved services and youth justice (ARCS UK Ltd 2013). This included research into housing needs (Nacro Cymru 2005) and the role of mental health practitioners in YOTs (Nacro Cymru 2009a). There was no equivalent arrangement in England.

4.6 Youth justice legislation in Wales

One of the most important developments has been to explore whether there should be legislative change to improve the support given to young people in trouble with the law (WAG 2011b and 2012b). On 12th July 2011, the first minister Carwyn Jones announced plans for a Welsh Prevention of Youth Offending Bill, which would be (WalesOnline 2011):

Aimed at improving the services available to young people entering and leaving the youth justice system by establishing duties on local partnerships to provide them.

Deficits in existing arrangements were recognised, notably a separation between family and youth justice services, insufficient buy-in from education services, networks and other learning commissioners and providers, which left YOTs marginalised (WG 2011a). An 'in-depth' review of devolved services identified the thresholds young people needed to reach to access a variety of services were often too high and 16 and 17 year olds in particular frequently fell between child and adult services (WG 2012b Annex B). The proposed legislative agenda was set out in the 2011 WG Cabinet Paper *Devolution of Youth Justice* (WAG 2011b).

This suggests one of the difficulties experienced in Wales is the delivery of entitlement (NAW 2010a). The aim of Extending *Entitlement* was to achieve better outcomes by improving the quality and responses of national and local services to meeting young people's needs. To achieve this, the WG recognised it had to co-ordinate policy, promote new ways of working, to monitor progress and the resultant outcomes for young people (NAW 2000; 74). However, for some implementation has been a 'mixed story' that falls down when it fails to 'reconnect young people to education, mental health, substance misuse and accommodation' (NAW 2009b: paras 95 and 90). Similar views were expressed by Morgan (2009) who drew attention to Welsh YOT inspections reporting on the inadequacy of CAMHS services, poor

education, training and employment outcomes, too little accommodation provision for children/young people and concerns about the effectiveness of some safeguarding arrangements. These shortcomings did not demonstrate there was a discernibly better service for children/young people under the devolved arrangements. YOTs were not regarded to be at fault as there were limitations to what they could do. However, there was more the WG could do to ensure entitlement was realised (NAW 2009b), in particular by better managing Welsh local government and local authority services (Morgan 2009). Introducing legislative levers was a further way this could be achieved.

However, ensuring entitlements are delivered to young people is not a peculiarly Welsh problem; lack of response from statutory services, gaps in social provision resulting in unmet need, lack of alternative education provision for those that struggle with the mainstream, a dearth of suitable housing for homeless 16 and 17 years olds and inadequate mental health and substance misuse services are problems also reported by YOTs in England (Phoenix 2009). Whilst the problems were recognised, the UKG has never opted to go down a legislative route to address them and this is where there is divergence between the two countries. The legislative journey in Wales is of interest as it showed distinct elements of differential thinking to that of the UKG and an evident welfare rather than risk-led orientation (ibid: para 9):

The underpinning principle behind the approach set out in the paper is a focus on the holistic welfare needs of the children and young people, rather than on their offending behaviour.

At this point there were three potential strands. The first was to ensure that children/young people in the youth justice system that meet the 'children in need' criteria set out under the Children Act 1989 were either directly supported by, or had their welfare needs coordinated by Children's Services. The second element was whether all children/young people remanded and sentenced to custody should receive looked after status. The LASPO Act 2012 extended this to remands across England and Wales; however the UKG did not have plans to do this for those sentenced to custody, as envisaged in Wales at the time (WG 2012b). The third area was to reinforce statutory planning arrangements and accountabilities through YOT management boards or other statutory forums (WAG 2011b).

In September 2012, these themes were taken forward in a Green Paper, which examined the need for additional primary legislation (WG 2012b). The Green Paper took a whole-system view and questioned the effectiveness of prevention; how services could join

together more to improve diversion and community provision; whether children and young people sentenced to custody should be designated as 'looked after' by the local authority and what more could be done to support resettlement from custody. Strengthening the planning and accountability of mainstream services was a recurrent theme, as most sections questioned what more could be done in this respect. However, the Green Paper showed some departure from the aims of the 2011 Cabinet Paper in that proposals around children in need were not included. In October 2013 a summary of the Green Paper consultation responses indicated the feedback would be used to inform the need for stand-alone youth justice legislation and what it would look like (WG 2013a:12). This was followed by a White Paper in January 2014, which 'builds on the evidence and analysis' of the Green Paper (WG 2014:3). However, although this was indicated, the White Paper took a significant change of direction (ibid:4):

The White Paper's sole focus is on this group of young people who are prolific offenders leaving community sentences or in custody, and their effective resettlement. The aim is to prevent further reoffending.

Some of the proposals which would have given Wales a more distinctive approach to youth justice either disappeared or become diluted in intent and new ideas emerged. For example, given that responses to the question of should looked after status be conferred on young people sentenced to custody, attracted a favourable response from respondents to the Green Paper (WG 2013a:), the rationale for this being removed from future proposals is unclear:

A majority responded that looked after status should be automatically be afforded to young people sentenced to custody, as it would help to confer the welfare services that were often required.

New ideas appeared which moved away from the whole-system approach, to one that proposed a statutory duty be placed on local authorities and health boards to establish Regional Reintegration and Resettlement Partnerships (RRRPs) – a multi-agency resettlement partnership. YOTs would be members of these partnerships, which would address the needs of prolific offenders (those convicted of three or more offences) and those completing custodial and community sentences. In addition, the RRRP would put in place support for young people needing assistance beyond the end of their statutory order (WG 2014). These proposals would give youth justice in Wales some distinct features, in particular by legislating for arrangements to be put in place for post-criminal justice support,

as well as strengthening the accountability to deliver services to those in the system. The RRRPs reflected a departure from UKG policy in their intent, and were described in the WG's White Paper as being a step forward in moving towards the key principles of the UNCRC (WG 2014). However, in 2014, the WG announced it would not be introducing the Bill within the existing Assembly, but would work with the YJB to improve resettlement services as part of a new joint strategy. This decision followed shortly after the Silk Commission, which was set up to review the current constitutional arrangements in Wales, recommended 'the treatment and rehabilitation of youth offenders' be devolved to the WG by 2017 (Commission on Devolution in Wales 2014:188).

4.7 The devolution of youth justice

The 'One Wales' agreement, which set out the programme of government between Labour and Plaid Cymru in the National Assembly (when in Coalition), gave a commitment to 'consider the evidence for devolution of the criminal justice system'. (WAG 2007c:29). The WG's Communities and Culture Committee conducted an inquiry into youth justice in Wales (NAW 2010a) and recommended the WG should 'consider seeking to have devolved responsibility for the juvenile secure estate' (ibid: 37). Professor Rod Morgan was commissioned to examine the risks and benefits of doing so.

The WG was initially non-committal in its response to the Inquiry's recommendation (NAW 2010b). However, in giving evidence to the Silk Commission, it indicated that the case for devolving youth justice (in the longer term) was strong, and would enable it to extend its rights-based approach by youth justice being better integrated into its wider children's policy agenda. However, doubt was expressed about taking on full legislative competence in isolation from the rest of the justice system because of possible loss of cohesion (for example between the police, courts and legal system), but an interim stage could be to seek 'executive competence' for the functions set out in the Crime and Disorder Act 1998 (WG 2013b:17). This would be a step forward from *The One Wales Agreement* which indicated the WG wanted to move towards 'the establishment of a single administration of justice in Wales' (WAG 2007c:29). Partial devolution has been achieved as local authorities have devolved responsibility for the welfare element of youth justice services (Morgan 2009; Drakeford 2010), although there are limitations to how far these can fully deliver a 'children first' approach because of Westminster's youth justice policies. A further step for the WG would be to increase control over other functions that would not require legislative change and gaining 'executive competence' for 'treatment and rehabilitation' as Silk suggested, would provide the scope to determine what some aspects of youth justice in Wales could

look like. For example, a purist ‘children first’ approach could bring into line services to young people in trouble with the law with all other child-focused activities, such as safeguarding and child protection, which may have been what the 2011 Devolution Paper was suggesting.

The YJB’s view on devolution is also of interest. Morgan (2009) reported that Mark Perfect (when Chief Executive of the YJB) advised in 2003 that the YJB opposed it, as it was not felt the WG could provide the necessary level of support to YOTs in Wales and because of the policy differences between the two governments. In particular Perfect said the WG’s focus on promoting access to universal provision would ultimately deliver poorer outcomes for children/young people, than the YJB’s policy of targeted intervention (indicating fundamental disagreement the WG’s policy of universalism as well as questioning its capacity and competence). The YJB’s current position is neutral. In its written submission to the Communities and Culture Inquiry it indicated ‘decisions on the administration of youth justice under devolved or reserved government lies with others’ (NAW 2009d: para 49). However, in the same proceedings Howard Williamson (while YJB board member for Wales), declared his opposition to devolution on the grounds it would ‘denude’ the youth justice community in Wales if expertise were drawn into the WG ‘from the field’ (NAW 2009b; paras 113 and 114). There is no available data on the number of YOT workers in Wales compared to England; but as Welsh YOTs comprise 11% of the overall YOT population, there is a smaller pool of expertise to draw from. Williamson’s concern appeared to be that if key figures were drawn into the WG from practice, Welsh youth justice would be significantly weakened. However, this assumes expertise would be drawn from YOTs and not YJB Cymru.

Morgan’s investigation into devolution found there was divided opinion amongst the youth justice community about whether it should occur with two broad viewpoints; pro-devolutionists felt it would provide an opportunity to pursue a more rights and welfare-based approach to youth justice, whereas the anti-devolutionists felt there would be diminished resources for youth justice, inadequate support to YOTs (from the WG) and the WG needed to prove its competence with regard to the existing arrangements, before seeking to extend its powers. Further, Morgan suggested that devolution should be thought of in terms of the ‘administration’ of some or all aspects of youth justice and not necessarily the devolution of all criminal law as it relates to young people (Morgan 2009:3):

I shall assume that what is currently contemplated is not devolution of youth justice in terms of the application of the criminal law to young people (the age of criminal responsibility, the point at which young people become subject to adult criminal law

procedures, prosecutorial arrangements, the organisation of the courts, the powers of sentencers, etc) but rather some or all aspects of the *administration* of youth justice.

This distinction seems to be similar to the view expressed by the WG to the Silk Commission. However, Morgan suggested, irrespective of whether or not the devolution path was pursued, more could be done within the existing constitutional settlement. He recommended there could be further collaborative working arrangements across Wales between local authorities and YOTs and improved (WG) performance management of local authorities. Further, the national policing plan could do more to develop an all-Wales approach to youth crime prevention, there could be additional independent analysis of custody rates in Wales¹⁸, improved networking of sentencers across Wales, greater use of mentoring and the development of more community-based opportunities for young people in trouble with the law. Morgan returned to this theme in a speech given in Cardiff in 2013, noting that with the exception of the regionalisation agenda of the WG (which promoted collaborative working), little progress had been made in any of the other areas identified in his 2009 report (Morgan 2013). However, the WG's cabinet paper *Devolution of Youth Justice* (WAG 2011b) had been published which started the process of exploring whether additional legislation was needed (as previously described).

4.8 Co-existence

The evidence suggests one of the major causes of irritation for Wales in the Wales/Westminster relationship in the early days was the lack of recognition of the devolved status of Wales; the automatic assumption on the part of Westminster officials there was no difference between the countries and failure to recognise the relevance of any difference. It appears there is now more accord, despite various UKG policy directives not always reflecting the implications for Wales and the WG openly disagreeing with some of the UKG's policies, but having no other alternative than to work with them, when they relate to the criminal justice system. In a recent submission to the Silk Commission on devolution it was suggested there was a 'positive relationship' between both governments to the extent that policy decisions made in Westminster 'were not imposed in Wales' and there was scope to 'reflect the difference between the countries' (Commission on Devolution in Wales 2013a; 1 and 2). Although this was in an evidence-giving session in which youth justice was discussed, it still does not always happen in practice. A submission from the First Minister of Wales, Carwyn Jones describes dissatisfaction with the way the *Transforming Youth*

¹⁸ This was reference to Nacro Cymru's review of custodial practices in Bridgend and Merthyr Tydfil, see Nacro Cymru (2011a) and Nacro Cymru (2011b).

Custody consultation was handled, not least of all because it was more Anglo-centric in its focus, than WG officials had been led to believe it would be (Commission on Devolution in Wales 2013b).

In terms of the bilateral relationship, some of the problems that were evident in the 2004 Richard Commission report remain. Whitehall suggests it is impossible to totally guard against mistakes being made, that 'intertwined responsibilities' present particular challenges and some government departments are more conversant with the implications of devolution than others (Commission on Devolution in Wales 2013c;1 and 2). The submission by the Permanent Secretary for Wales, suggested 'there was no single solution and it was an ongoing process of raising the profile of Wales with Whitehall' (Commission on Devolution in Wales 2013d 3). However, despite difficulties occurring from time to time, there is currently a strong degree of alignment between the WG and YJB Cymru about the direction of travel of youth justice in Wales. The WG has sought to increase its influence over youth justice (through the legislative programme) and to exert its authority where it could, with devolution remaining the long term aim.

Chapter Five

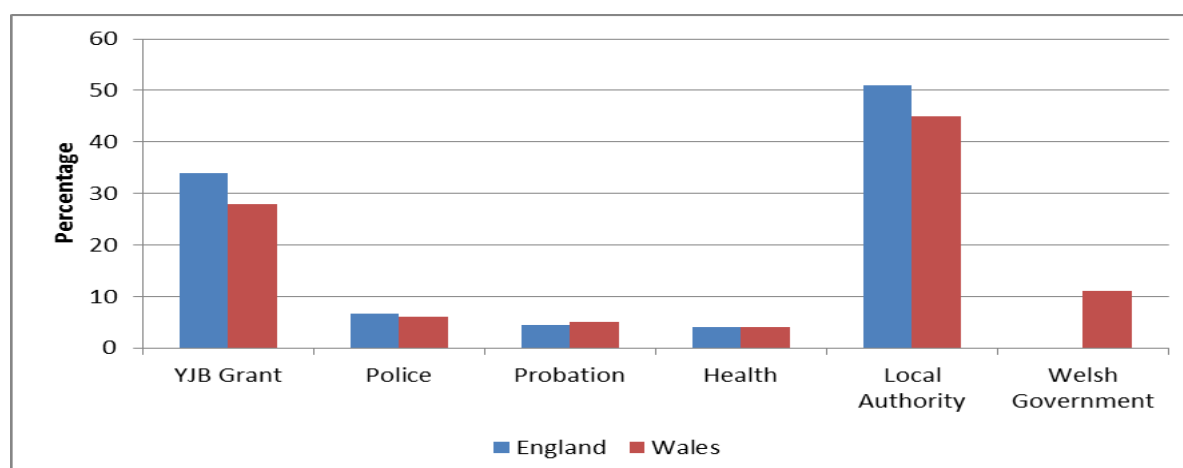
Parallel and Equivalent Youth Justice in Wales

5.1 Statutory functions and funding

There are a number of factors that could indicate whether youth justice in Wales is markedly different to that of England, aside from the policy differences and the practice initiatives and cultures that emerge from this. In Wales the 'welfare' services that are required by statute to be part of YOTs are devolved to the control of the WG, which means a significant proportion of core YOT activity, notably inputs from health, education and social care is funded by the WG. Although these agencies are outside of Westminster's control (Morgan 2009; Drakeford 2010), Welsh local authorities and health services are bound to supply the provision in order to allow YOTs to function as required under the Crime and Disorder Act 1998 and other legislation. The determinant of how much resource to provide and what it supplies is a local matter whether a YOT in England or in Wales and will mean the roles of individual workers within teams can vary. Since 2011/12 the YJB YOT grant has been a single amount with no ring-fencing for designated strands of work. In 2012/13 it was at its lowest level since 2006/7 (YJB/MoJ 2014), whereas there was a 4% up-lift in funding from the WG to Welsh YOTs in the same period. Further, YOTs vary in size from 20 staff members to 500 (YJB/MoJ 2014), so differences in the compositions of the workforce may influence how they function, notably whether practitioners undertake 'generic' activities or have designated functions in specialist teams.

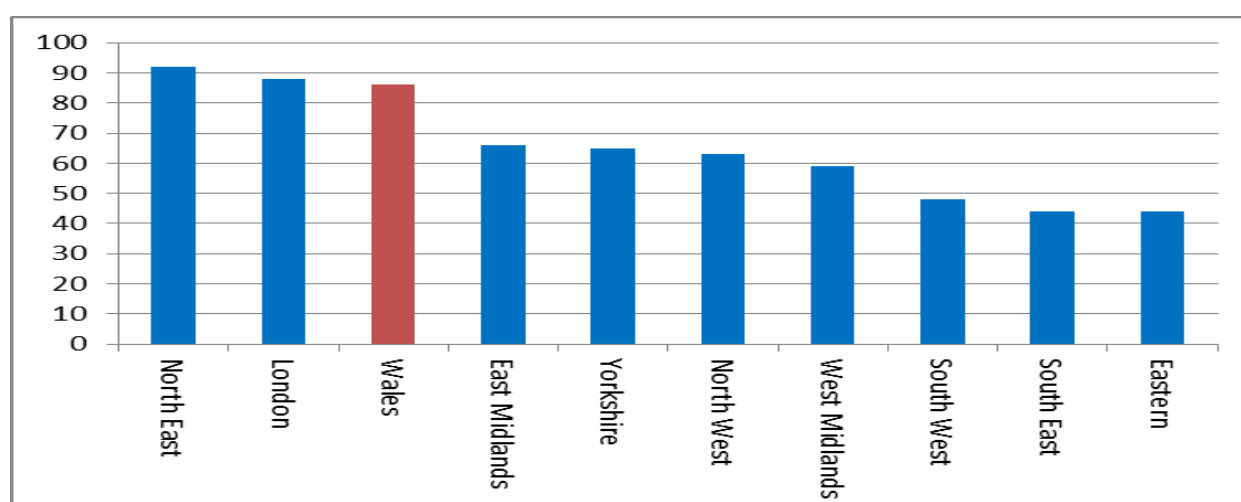
In 2012/13 the WG provided £2,886,806 to YOTs. This is 11% of the overall partnership share, but as the local authority and health contributions also come indirectly from the WG, it is nearer 60%. The local authority is the biggest contributor to YOT funding in both countries. The figures are taken from the MoJ/YJB regional partnership data for 2012/13 (Annex B Resources Table B.3) and illustrated in figure 5.1. The MoJ also measures partnership contributions in terms of funding per capita of the 10 to 17 year old population (mid-year population estimates for 2010 are used here). Wales (n=290,026) and the North East of England (n=238,124) have the two lowest juvenile populations and both feature at the top end of the funding arrangements (figure 5.2). The WG contribution is factored into this, however without it, Wales would still be at the upper end of the per capita measure.

Figure 5.1: Share of partnership funding for YOTs in England and Wales - 2012/13



This brief analysis illustrates the core funding arrangements for England and Wales are broadly comparable. However, it would require a detailed analysis of what the WG specifically funds (this is not published) to determine whether there is markedly different activity in Wales to that of England and whether and what difference this funding makes to youth justice in Wales.

Figure 5.2 Partnership funding per capita of the 10 to 17 year old population, mid-year in 2010

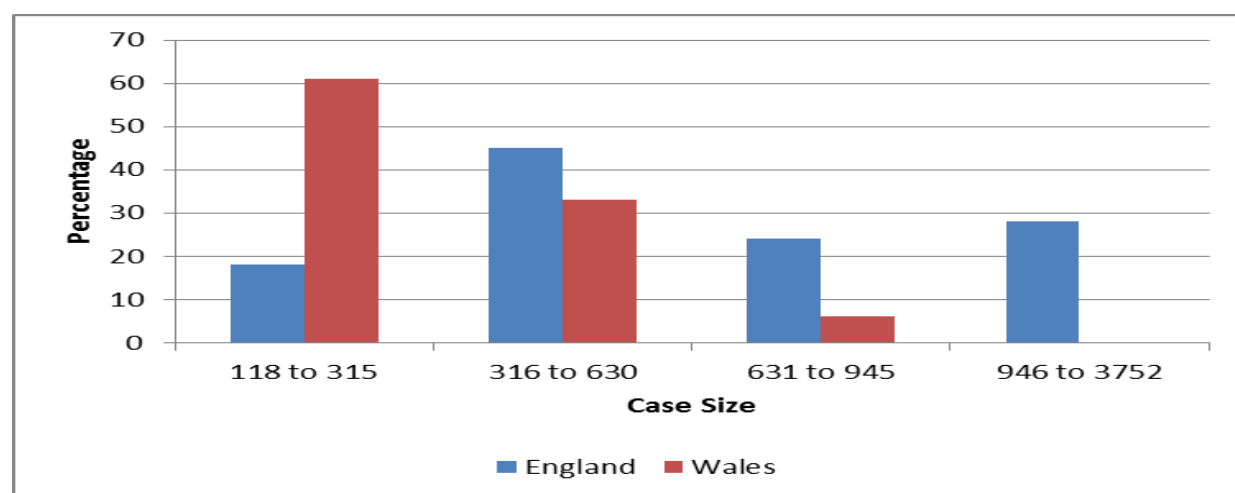


In terms of financing specific activities, differences between the countries occur because some initiatives and sources of funding apply only in England and some only in Wales, which may impact on the availability of services for young people. For example, the *Youth Crime Action Plan 2008* largely applied to England; 69 Youth Crime Action Plan areas were in England (covering 48% of English YOTs) with just two in Wales - Cardiff and Newport (11% of Welsh YOTs). Further, in July 2011 £2m was made available for point-of-arrest diversion

schemes in England only (YJ Bulletin 2011a). Wales does not have large government departments that can independently fund youth justice-related initiatives in the same way the DCSF (when a joint sponsor of the YJB) or the Department for Health in England have done (see figure 5.4). However, this may be offset by the WG's Youth Crime Prevention Fund, which funds wide-ranging preventative activity that does not have an English equivalent, so whilst on the surface it might appear Welsh children and young people could be disadvantaged relative to those in England, this is not necessarily the case because of the WG funding stream.

The size of YOT caseloads can be a factor in funding arrangements. Figure 5.3 illustrates the distribution across England and Wales. This is from an analysis of YJB regional disposal data in 2011/12. Not all of the disposals would be supervised by the YOT, as it includes first tier penalties such as fines and compensation orders, but it gives an indication of caseload size. Merthyr Tydfil (n=118) had the smallest and Wessex (n= 3752) the largest number of disposals, with the average being 630. In Wales, Blaenau Gwent Caerphilly (a dual authority YOT) had the largest number of disposals (n=725), which none of the three main urban centres of population exceeded: Newport (464), Cardiff (395) and Swansea (306). 61% of Welsh YOTs had less than 315 disposals, compared to 18% in England and only 6% of those in Wales were above the average of 630, compared to 37% in England.

Figure 5.3 Percentage distributions of disposals in YOTs in England and in Wales in 2011/12



The lower numbers of young people transiting through the youth justice system in Wales (which is not just confined to rural areas – although there is less demand for services in these localities), means YOTs may have been too small to attract funding from UKG initiatives that have numerical eligibility criteria, even where they are intended to apply to

both countries. For example, whilst the custody pathfinder initiatives (see page 16), announced in December 2010 (YJ Bulletin 2010) in principle applied to England and Wales, it would have been difficult for YOTs in Wales to apply on a single YOT or consortium basis, as they did not meet the criteria of having a minimum of 50 young people in custody at the point of commencement (although this is clearly not a bad thing). The same was true of some of the YJB's past prevention initiatives (see chapter seven).

5.2 Comparable Services

One of the comments made by the YJB about youth justice in Wales is that it should be 'equivalent to, and parallel with, its approach in England' (YJB nd.b:15). At the time the reference was made to ensuring there were sufficient custodial places for Welsh-resident children and young people in Wales and that YJB plans for Wales took into account WG policy. 'Equivalent' implies young people in Wales should have access to comparable provision to their counter-parts in England. However, it also infers there is little scope to deviate from certain aspects of the youth justice system, which may or may not be congruent with the 'children first' approach. 'Parallel' appears to recognise difference, but also that any developments in Wales should proceed in tandem to those in England. Both approaches suggest there is limited opportunity for complete divergence and policies adopted in England should be implemented in Wales, in the same way. To date this does not appear to have led to a conflict of interest with the more rights-based policies of the WG, which on paper might have suggested some variance.

The notion of 'parallel' and 'equivalent' provision has been explored further. An examination of the YJB news bulletins since 2006 (when they were introduced) reveals that different but thematically similar initiatives have been developed in both countries. To illustrate this; the YJB worked with the Housing Corporation in England to improve access to housing for young people at risk (YJ Bulletin 2007) and set-up an alliance with the YMCA in England to provide additional support for young people (YJ Bulletin 2008b). There is no mention of a similar initiative in Wales, even though the YMCA is a national organisation which operates in both countries. However, the WG commissioned Nacro Cymru to produce a number of reports on accommodation and housing need (for example Nacro Cymru 2005). This resulted in the formation of the YJB Accommodation Committee in Wales, which worked in conjunction with the National Homelessness Network over a two-year period, and with funding from the WG examined the housing problems faced by young people in the justice system and made recommendations to improve practice (Llamau 2011). These contrasting

approaches are broadly parallel and reflect a difference in Wales because of the WG's devolved responsibility for housing and its approach to addressing housing need. With regard to resettlement from custody, in 2009 YOTs in England could apply for Integrated Resettlement Support grants through *Youth Crime Action Plan* funding (YJ Bulletin 2009), whereas Welsh YOTs could not. None of the four resettlement consortia funded as part of the MoJ's *Transforming Youth Custody* work programme are in Wales, but are situated around high custody areas in England. The European Social Fund and the Big Lottery have financed different resettlement projects in England but not Wales, for example the Big Lottery *Beyond Youth Custody* programme in England. Wales took a different approach, and with the support of the WG, the YJB established six YOT Resettlement Support Panel pilots and two resettlement broker projects (in North and Southern Wales) (see chapter nine). The WG have also financially supported the YJB to develop an 'enhanced case management project', which is being tested in four Welsh YOTs. This is described as a new approach to case management as it is a psychology-led way of working with young people with complex needs¹⁹ (YJB 2014a). This implies WG funding can be critical to the delivery of parallel and equivalent youth justice in Wales, either because it is supporting a 'new approach' as in the case of the Resettlement Support Panels (WG/YJB n.d.a: 4) and the 'enhanced case management project' or because of lack of UKG funding is plugging a gap, which may be more of an act of compensation than innovation. In addition, it would not be unreasonable to assume that because of devolution the UKG would expect the WG to fund relevant initiatives, and the WG would want to.

The aforementioned examples also suggests YJB Cymru and the WG are in accord about youth justice priorities as they have developed joint initiatives, which is also contingent upon having common goals and good working relations. These different approaches raise the question of whether the landscape of youth justice looks any different in Wales to that of England, as the structure is the same, e.g. the availability of pre-court diversion, court processes and sentencing disposals. Figure 5.4 sets out activities that have been identifiable in recent years, not all of which have been YJB-led or initiated. It is not intended to be exhaustive, but to pinpoint some obvious developments. It shows there can be variance in what gets developed where, which is largely but not exclusively funding-led.

19 This is based on the Trauma Recovery Model, see Skuse T and Matthew J 'The Trauma Recovery Model: sequencing youth justice Interventions for young people with complex needs', in the *Prison Service Journal* July 2015 No 220 pp16-25

Figure 5.4: Comparison of youth justice activity in England and in Wales

Activity	England	Wales
Prevention	Realising Ambition – a Big Lottery project that is supporting 25 projects for three to five years, to replicate the best evidence based practice in the prevention of offending.	Youth Crime Prevention Funding from the WG for broad-ranging preventative activities.
Pre-court diversion – youth crime action plan areas	Triage schemes were developed in 69 areas in England as a result of the 2008 Youth Crime Action Plan.	A Triage scheme operates in Cardiff. A further scheme in Newport is no longer operational.
Pre-court diversion - YOT led initiative	Northamptonshire YOT added an additional stage into the final warning scheme of an informal action.	The Bureau model (which originated in Swansea YOT has been adopted by YOTs across Wales – with the exception of Cardiff – see above)
Pre-court diversion - Department for Health (England)	Point of arrest diversion schemes – for selected areas to develop existing arrest liaison and diversion activity for children and young people with health-related problems.	No equivalent
Community Interventions	Intensive Fostering was piloted in three localities in England as an alternative to custody funded by the DCSF.	The enhanced case management project is a three year pilot of a psychology-led model of working with young people with complex needs (a WG/YJB Cymru initiative).
Reducing the use of custody	Prison Reform Trust 'Out of Trouble' campaign offered support to YOTs in England to reduce custody. YJB custody reduction pathfinders (originated in four areas in England and two remain). They were an 'invest to save model' with funds made available 'up front' with an expectation that savings would accrue as a consequence of reductions in custody.	Custody reduction plans were developed for Bridgend and Merthyr Tydfil YOTs by Nacro Cymru working with the WG and YJB Cymru. This was an AWYOS delivery plan action.
Resettlement	Grant funding from the <i>Youth Crime Action Plan</i> for resettlement consortiums Mayor of London resettlement initiatives (PbR model), including the Daedelus project. Beyond Youth Custody, a Big Lottery project that aims to develop models of effective practice and a resettlement strategy across England. The voluntary sector provides the resettlement services.	Resettlement support panels were piloted in six YOTs in Wales, over a two-year period, funded by the WG. The development of resettlement broker projects in North and South Wales (a WG/YJB Cymru initiative).

One of the problems of comparison is the distribution of YOTs between England and Wales. Of the total 158, 11% (n=18) are in Wales and 89% (n=140) are in England (YJB/MoJ 2014), so there is a proportionate difference, geographically. This may mean there are fewer Welsh YOTs (or local authorities or police force areas) that experience new initiatives. Some youth justice initiatives do not have 100% coverage in either or both countries, which makes it difficult to gauge the comparative impact of any of the programmes or projects. A limitation of figure 5.4 is while its focus is on national initiatives or those that have attracted national attention, local developments that might indicate differences of philosophy (and therefore approach) remain under the radar. It is also difficult to establish whether all known initiatives are identified, certainly the larger ones are, if they have government support/are government-led, but smaller regional or local initiatives are not as recognisable and are less likely to be evaluated and disseminated. Not all initiatives may have been publicised in YJ Bulletins (which is one means of identifying them) and although the *AWYOS* delivery plan (WAG/YJB 2009) and YJB corporate reports and business plans outline priorities and actions in Wales, it is impossible to tell if everything is fully accounted for, to be able to compare cross-border developments. It is also not always clear which government is funding what initiatives in Wales and what the Youth Crime Prevention Fund specifically supports.

The availability of funding for a core or particular activity is only one indicator of difference in practice; albeit a suggestive one. Core government grants to YOTs or the secondment of specialist staff, might be used in very different ways. Similarly the existence of initiatives with comparable aims (in both countries) does not guarantee that practice in support of those aims will be the same, and as the literature review identified, practitioners may mediate practice for different reasons, which causes variance. Replicating initiatives, programmes or interventions in different settings and localities can have mixed levels of effectiveness (Merrington and Stanley 2000) and it is possible that because of urban-bias, they do not immediately lend themselves to delivery in a rural environment. The nature of caseloads may also determine what services look like because of the prevalence of certain types of offending behaviour, the risks they present and the interventions that are required in response.

Figure 5.4 demonstrates that the picture in both countries is not markedly dissimilar, which does not indicate on this basis alone that Wales has obviously different youth justice practices. It shows that both countries take a similar approach to what they do, although may get there in different ways. However, it is also possible that there are more nuanced differences than this broad-brush overview has revealed.

5.3 Rurality

The largely rural demography of Wales may have an impact on service development and delivery. England and Wales have roughly the same rural composition (80% of the land mass), but one of the differences between them is Wales has a continuous block of rural counties (in west, mid and north Wales), whereas in England the rural localities are interspersed amongst urban settlements (Pateman 2011). Statistics for Wales (2008), advises of the 22 local authorities in Wales, nine are 'broadly' defined as rural; Carmarthenshire, Ceredigion, Gwynedd, Conwy, Denbighshire, Powys, Monmouthshire and the Isle of Angelsey²⁰. Although they comprise five and a half²¹ of the 18 YOTs in Wales, it is a significant proportion of the country that has small, widely dispersed populations and by default small caseloads of YOT service users.

A key difference between rural and non-rural practice is the service is usually taken to its recipients and not vice versa, which adds time and cost to working arrangements. It may for example, make some of the more inflexible obligations of *National Standards*, challenging to achieve (Minkes and Raynor 2013). The need to make practice portable may influence how services are developed and what might be viable. Further, lack of provision in widely spread and thinly populated communities, a lesser range of services generally and poor access to them may result in differential treatment of young people, disadvantage them and some would claim potentially affect their life chances (Phillips and Skinner 1994). From an 'extending entitlement' perspective, this is potentially problematic. Minkes and Raynor (2013) discuss the UKG's failure to recognise the needs of rural justice services (Probation in particular) and the urban-bias of central policies. As discussed in the literature review these issues have a resonance for youth justice and have been experienced in a similar way. The demography and largely rural composition of Wales may mean it has less in common with England as a whole, but more so with the predominantly rural areas of England; the North East (on the basis of a comparable youth population) and the South West (in terms of geographical make-up).

5.4 Re-offending

The previous discussion has revealed that youth justice in England and in Wales looks broadly the same, with some localised differences, so it is of interest to examine rates of re-offending to establish whether there are different outcomes in Wales. Figure 5.5 is taken

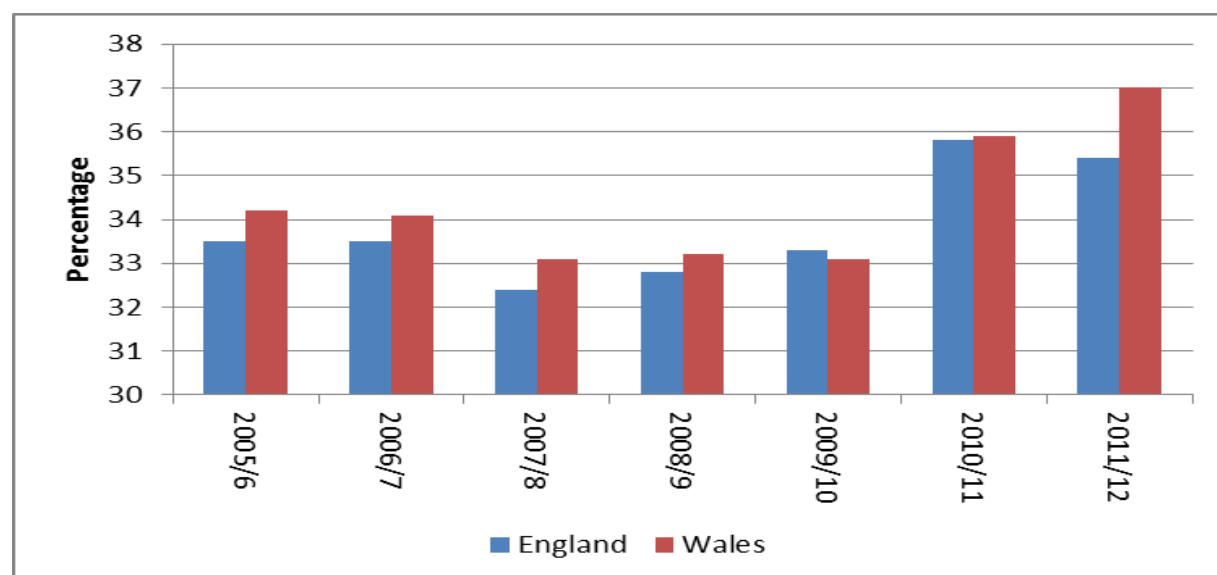
²⁰ There are five valleys authorities - Blaenau Gwent, Caerphilly, Merthyr Tydyl and Rhondda Cynon Taff; three urban - Cardiff, Newport and Swansea and five others – Bridgend, Flintshire, Neath Port Talbot, Wrexham and the Vale of Glamorgan.

²¹ Monmouthshire and Torfaen are a combined service

from the YJB's Corporate Plan for 2014-17 (YJB 2014a). It shows that rates of re-offending have been slightly higher in Wales than in England, although not markedly so. Although 2006/7 was the peak year for first time entrants (see chapter eight), it was not a peak period for re-offending. Since 2009/10, rates in both countries have risen more markedly and particularly so in Wales in 2010/11.

Analysis of YOT re-offending data (from the YJB's proven rates of re-offending tables for individual YOTs) indicates the overall re-offending rate increased from an England and Wales average of 33.6% in 2005 (the first year the data was collected in this format) to 35.9% in 2011, with 77% of YOTs having higher rates of re-offending in 2011 compared to 2005. In 2011 the range of re-offending rates was from 24.9% (Warwickshire) to 56.8% (Merthyr Tydfil). As the youth justice population has decreased the rate of re-offending has increased. It has been suggested the current youth justice cohort is made up of a more distilled population of young people with entrenched and challenging behaviours and offending histories (WG 2014), which may explain the increase. If this is the case and the overall population continues to decline, young people with these characteristics will make up a greater proportion of caseloads and re-offending rates will remain high.

Figure 5.5 Percentage of young people re-offending in England and Wales



The youth justice population is much smaller in Wales than in England so it is possible this 'distilled' effect has been more keenly felt. An analysis of the distribution of re-offending rates (for 2011), shows that 55% of YOTs in Wales are above the 'average' rate of re-offending (35.9%), compared to 47% in England. That said, the MoJ's analysis of proven re-offending advises against making a comparative analysis of YOTs purely on the basis of its re-

offending tables (MoJ 2013e). This is because there are a number of variables that can lead to higher rates of proven re-offending, such as the characteristics of young people in the locality and their offending histories (in particular the extent to which there are a significant number of previous offences). YOTs with a younger age profile are likely to have higher proven re-offending rates, as do those areas with high police detection rates. This could mean any differences in Wales have less to do with practice and more to do with the characteristics of the youth justice cohort. A detailed analysis would need to be undertaken to provide a more informed picture and to identify if there are any significant differences between England and Wales, which is beyond the scope of this study.

5.5 A similar landscape

Youth justice activity in England and in Wales is similar, although there are some differences that largely originate from the availability of funding, which creates the opportunity to develop new initiatives or lack of funding which can prevent this. However, re-offending rates are broadly comparable between the countries and on the surface this does not suggest vastly differential practice. The WG has acted as an enabler for some activity in Wales and is working in partnership with YJB Cymru on a number of joint ventures. However, varied initiatives also exist in England, for assorted reasons, which suggest this is a feature of the youth justice system, as efforts are made to find effective responses to young people.

In order to explore this further, three areas are examined in more depth in the following chapters; prevention from entry into the criminal justice system, an important objective of the WG and one aspect of the youth justice system it can have direct influence over as it falls outside of the non-devolved justice system (chapter seven), pre-court diversion (in chapter eight) and custody because it could be expected that in a children-rights orientated framework the reduction and minimisation of use of custody would be a high priority (chapter nine).

Chapter Six

Practice cultures in YOTs in England and in Wales

6.1 Introduction

This chapter examines the attitudes and values of the four YOTs in the study (two in England and two in Wales), to determine whether there were discernible differences between them in attitudes to practice. The 'dragonisation' theory suggests YOTs in Wales would have adopted 'children first' principles, meaning that concerns for young people's best interests would have primacy, whereas YOTs in England would be risk-focused and place more importance on addressing offending behaviour than wider needs. To try and establish if this was the case, practitioners were asked to rank a number of statements about youth justice in order of importance, to give an indication of what their priorities might be. This was supplemented with qualitative data from semi-structured interviews, which asked practitioners whether their team had an identifiable practice culture and if so, what it was. The findings from the ranking exercise are analysed first, followed by the interview feedback.

6.2 The ranking exercise

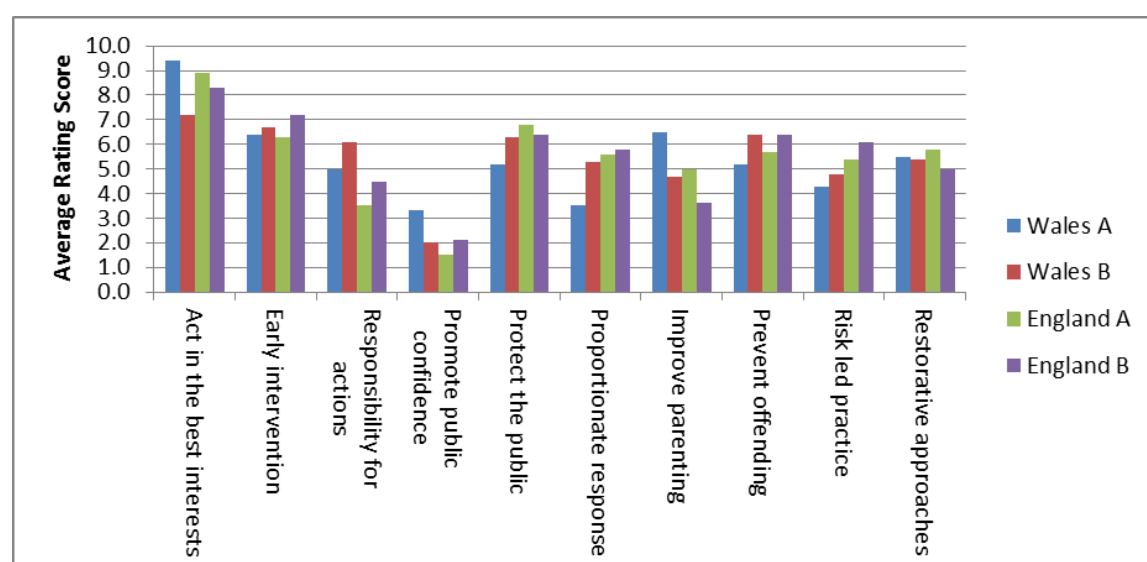
Practitioners ranked ten statements about youth justice practice in order of 'one' being the most important and 'ten' being the least important to practice (see figure 6.1 for the list of options). The responses were reversed when the results were analysed to avoid counter-intuitive interpretations. The value of the response ascribed to each statement was added up and divided by the number of respondents (in each locality) to give the average response rate for each YOT. Respondents were asked not to give the statements equal standing, but to select between them. It is acknowledged this is a crude measure as it forced choice by separating the different principles, whereas in practice they are interrelated and different philosophies often co-exist in an integrated way. A number of respondents made reference to the difficulty in selecting between the options available for various reasons:

It is hard to rank in order of importance as all the statements are important and you can't have a successful system by just focusing on a few areas (EBP13)

A very difficult task, I am sure I could re-assess and make different priorities at different times. For me it is not a fixed ranking (WBP12)

Despite this, the exercise revealed some similarities and differences between the individual teams and on an aggregate basis between England and Wales. Figure 6.1 shows that ‘acting in the best interests’ (‘best interests’) of children and young people’ emerged as the top priority across all the YOTs. ‘Prevent offending’ was also in the top three, of three of the four (Wales A excepted) as was ‘early intervention’ (England A excepted). ‘Promote public confidence’ was in the bottom three in all instances and despite risk identification and management being a central characteristic of the youth justice system, ‘risk led practice’ was in the bottom three, in three instances (England A excepted).

Figure 6.1: A comparison of the average response rate of each YOT to the rankings statements



Practitioners were asked to explain why they had selected their top and bottom three choices:

At the top is to protect the public, as it's the most important reason. The main aim of the youth justice system is to make sure young people do not offend. This helps to protect the public and should help the young person to a positive future. At the bottom is public confidence, although it's good to have, it's not a priority, it's more important to help the young person (WAP16)

Others described how they saw the different factors impacting on each other:

Making young people responsible for their actions will teach them more than punitive actions. This can be achieved through restorative justice approaches, which can

contribute to preventing further offending. Protecting the public is our main responsibility, but early intervention could prevent a young person going onto more serious offending (EAP1).

The findings revealed consensus across all the YOTs as their pattern of responses is very similar, although the Welsh YOTs showed more inclination to 'responsibilisation' than the English ones, which is not a characteristic associated with children's rights, but neo-liberalism and risk-led culture (Cavadino and Dignan 2009). Other differences were less pronounced. The analysis also revealed there were differences within the teams that were potentially greater than the differences between them.

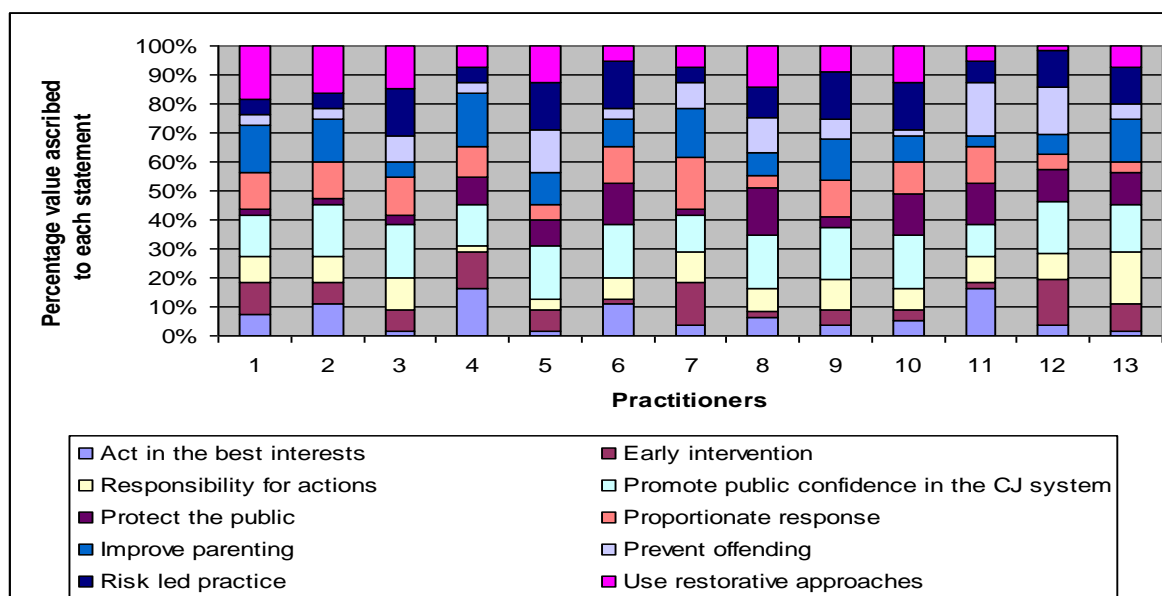
6.2.1. Differences within teams

Wales B has been examined to illustrate the differences within teams, due to the range of responses provided in the ranking exercise, and because the interviews revealed some tensions between team members in their attitudes towards practice (see section 6.3.4). Analysis of the other YOTs showed a similar, although less marked pattern, but the discussion here focuses on a single example for reasons of space. Whilst 'best interests' emerged as the top priority of all the YOTs in the ranking responses, the proportions of practitioners in each team that placed it first varied considerably; in Wales A (81%), England A (69%), England B (54%) and Wales B (31%). In Wales B 'best interests' was the second or third choice for the majority of respondents, whereas it was rated as the clear cut first choice by more practitioners in the other YOTs.

Figure 6.2 compares the responses of each team member in Wales B to the ranking exercise. The responses practitioners gave to each statement are reflected in the individual bar charts. For example, practitioner 'one' rated using restorative approaches as the most important principle and protecting the public as the least important (with all other responses rated in between). The percentage value is derived from the numeric rank. When the individual responses are analysed, 31% of team members in Wales B placed 'best interests' as their top priority, 23% chose 'early intervention' or 'protecting the public' and 7% apiece for 'taking responsibility for actions', 'preventing offending' and 'using restorative approaches'. The least favoured option was 'promoting public confidence' (46%), whilst 'taking responsibility for actions', 'ensuring a proportionate response', 'improving parenting', 'preventing offending' and 'using restorative approaches', attracted 7% of responses each. This demonstrates the diversity of views which can co-exist within a team, which may be due to practitioners' own preferences, experiences and areas of expertise. It also shows that with such diverse views, establishing that a single culture exists within a team, let alone across

the system as a whole is challenging, as a wide variety of views and practices can co-exist, but perhaps more importantly, within the context of this study that a ‘children first’ philosophy may not necessarily be shared by all practitioners in a Welsh YOT.

Figure 6.2: Individual practitioner responses to each of the ranking statements in Wales B



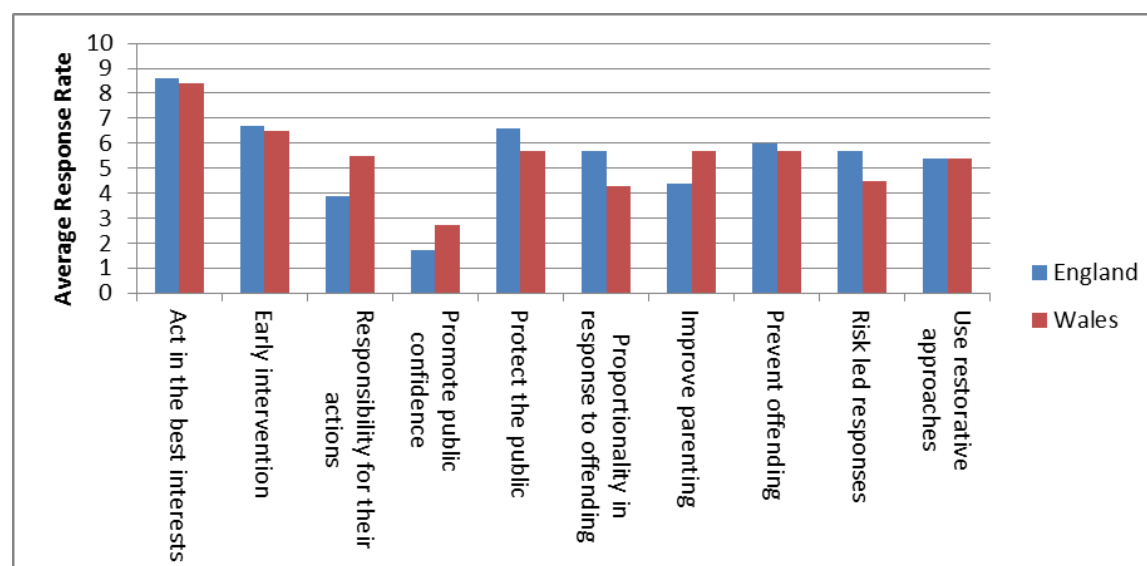
6.2.2. The comparative picture

The final stage of the ranking analysis was to examine the overall differences between England and Wales. Figure 6.3 shows the top three rankings were the same in both countries; ‘best interests’, ‘early intervention’ and ‘protect the public’, whereas at the bottom end of the scale only ‘promote public confidence’ was common to England and Wales.

This comparison is relevant to the research question, as it might have been anticipated that YOTs in Wales would have given ‘best interests’ a higher rating than those in England. In fact, this principle had the highest ranking in both countries, with England giving it a marginally greater rating than Wales. The statutory aim of the youth justice system is to prevent offending and whilst this was placed fourth in England and third in Wales, it was less important than acting in the ‘best interests’ of children/young people and ‘early intervention’. One possible interpretation is these two factors are considered to be the mechanisms for achieving successful prevention. Where there was a more pronounced difference between the countries, it was because of greater prioritisation of ‘public protection’, providing a ‘proportionate response’ and ‘risk-led’ practices in England, whereas the Welsh YOTs placed more emphasis on young people taking ‘responsibility for their actions’ and ‘improving

parenting’. Using restorative approaches was given equal weighting in both countries. If acting in the ‘best interests’ of children and young people is taken as a proxy measure of the intent to deliver a ‘children first’ service, the results of the analysis indicate that practitioners in both counties had very similar opinions about its importance. However, what is also relevant is how the philosophy is converted into practice, which the qualitative interviews explored further. This is of relevance to the study, as even though a welfare culture might be claimed; the drivers of the current system mean it has to operate in tandem with risk-led practice, which as the literature identified does not always promote ‘best interests’ (see also section 2.10).

Figure 6.3: Comparison of the combined viewpoints of practitioners in YOTs in England and in Wales to the ranking exercise.



It is also of interest that ‘public protection’ emerged as a priority for the YOTs, which might have been expected, given there is literature outlining how youth justice has become more focused on risk-related assessments and responses (Phoenix 2009). Had this analysis been undertaken at another point in youth justice’s history, different priorities might have emerged, as each generation of practitioner has had its own set of influences to contend with. For example, the principle of proportionality was introduced as a result of the Criminal Justice Act 1991, but has less significance with practitioners at the present time.

6.3 Youth offending team culture

Whilst this exercise was useful in establishing what the prevailing attitudes of the four YOTs were, it did not provide enough detail about the culture of the teams and how they responded to young people. Semi-structured interviews were used to establish whether each

of the YOTs had a particular ethos, what it was and how it influenced practice. The responses from each team were examined in turn to identify what was important to each YOT, the degree to which there was commonality and difference across the teams, and what this revealed about practice in England and in Wales.

6.3.1 England A

England A was examined first as there had been a distinct change of ethos brought about by a new manager (five or six years previously), who questioned whether the YOT was achieving good outcomes for young people as high rates of breach and custody suggested otherwise (see also section 9.6.4). There was a perception the team had become too pre-occupied with following prescribed processes, notably adhering to *National Standards* and the needs of young people had become secondary. As a result practice had become too punishment-focused and enforcement-led:

Historically we would have been quite punitive and getting hung up around consequences and that National Standards were rigorously enforced. If the young person did not comply we would take them back to court very quickly, to be tough, to reinforce the consequences of their actions. We have looked at what we were achieving at the expense of young people and realised that a lot of what we were doing was not good for them – we were part of the problem and not the solution (EAP14).

The interviews revealed that a HMIP inspection report (in 2008) had also drawn attention to the lack of attention to welfare in team practice. One of the recurring comments (in the interviews) was inflexible practice leading to breach being used too easily and frequently. If young people failed to attend appointments, there was a culture of automatic breach without first finding out whether there was anything affecting young people's ability to attend/comply. Although this propelled young people to custody, it was still regarded as the right thing to do. Young people were treated the same irrespective of their needs and circumstances and individualised responses were lacking. It was decided to move away from this model to engage more with young people and to find out what would work, for example by arranging appointments at suitable times and in appropriate locations, not resorting to an immediate punishment if one appointment was missed, using compliance panels to investigate the reasons for failures (see section 9.6.4) and examining what the YOT could do to provide support. Practitioners were encouraged to be realistic about the expectations placed on young people and to pay particular attention to looked after children and their specific problems:

Young people with attachment issues and a lack of trust are the most difficult to work with and are likely to reject our involvement. If you build a relationship there is a chance your work will be effective (EAP2).

As a result, practice shifted from placing the onus on the young person to complete their order and penalising them if they failed or struggled to respond appropriately, to being more supportive and enabling:

I have a young man I am working with at present and I could breach him, but his family circumstances are so appalling that I will only put him in a position that either makes things no different or worse. He will be revoked, re-sentenced and back to square one. It will achieve nothing other than breaking down the rapport I have with him (EAP6).

The team had a number of agreed priorities, which helped practitioners to be clear about the expectations placed on them; reducing recidivism, connecting young people with education, training and employment and promoting young people's participation in decision-making through 'voice and engagement' (see chapter ten). Relationship-building was at the centre of this:

I want them [practitioners] to focus on engaging young people and listening to them. Its challenging because if you are busy you tend to become more process focused. The focus of the team is to put young people first and concentrating on engagement (EAP2).

The interview feedback is consistent with the ranking exercise, as England A had the lowest ranking for taking 'responsibility for actions' of the four YOTs and within the team practitioners rated it as one of the three least important principles (along with 'improving parenting' and 'promoting public confidence'). A further important cultural shift was the adoption of an anti-custody stance and making a concerted effort to reduce the level of custodial sentencing. However, even in a team with strong leadership and the commitment to embed changes in practice, there was still doubt about whether there was total acceptance of the new direction:

I have a staff member who has been away from work for the best part of two years and has now come back. She is writing [court] reports in the old style and I am coaching her to alter her approach. I reviewed a report recently that was punitive in

tone. We don't work in that way anymore and it is a process of continual discussion and negotiation (EAP14).

The YOT and operations managers tried to ensure a consistent approach was taken by the team, but recognised it was an on-going challenge as approaches could erode over time and staff changed, which altered the team culture. The task of embedding cultural change was 'a work in progress' and although the YOT had become more child-centred, interviews with staff showed that varying approaches still existed:

I am relaxed about breaching, if a young person rings me and tells me they can't make it and have gone to see their friends (provided it does not happen all the time), I can live with it. We might have a conversation about that not being an acceptable excuse, but it would not necessarily result in a warning. Someone I work with will give a warning if someone is 15 minutes late. If a young person is sticking two fingers up I will think of breach because they need to go back to court and have the boundaries and responsibilities re-drawn, but for a young person that is just being a young person, they should not be breached. I have different rules and expectations to some of my colleagues, but I have also taken on cases where I have thought the young person has been given too many chances (EAP11).

The discussion of culture in this YOT is interesting as it highlights the importance of local management and the recommendations of HMIP inspections in mediating national priorities and guidance. The influence of the YOT manager was crucial in directing practice; the current post-holder had a very different attitude to their predecessor towards the use of breach and custody and changed the team approach as a result. These changes were largely understood by practitioners and were becoming embedded in the service culture. It is also noteworthy that the adoption of child-friendly practice did not arise from central prescription or a national strategy advocating such an approach (such as the AWYOS), but because the YOT manager wanted their team to work in this way.

6.3.2 Wales A

There had also been a change of approach to practice in Wales A. Although the shift did not appear to have been as profound as in England A, there was some similarity between the YOTs as Wales A also altered its approach to adopt more welfare-focused practice. The YOT had (and continued to be) an advocate of the risk-led approach, which had been at the forefront of its practice until 2010, when a HMIP inspection of the service criticised its practices around safeguarding young people's welfare, which led to changes:

It's moved from a risk based, offending based service to one that although risk based in terms of indicating how interventions should take place and how things should be assessed and managed, is now looking far more at holistic needs, notably safeguarding which has become a much more focal point of what is done. The shift has occurred as a result of the last core case inspection where it was the weakest of the three areas we were inspected on (WAP11).

Previous YOT inspections identified safeguarding was not always prominent in YOT practice and links with children's services needed to be strengthened (HMIP 2009a: MacLeod et al, 2010). However, Wales A was the only team that commented on safeguarding specifically and this is of interest because it might have been anticipated it would have had more prominence in 'children first' practice. Despite this, practitioners stated the YOT had always had a child-centred focus that included family-based work and had ranked 'improving parenting' as the second most important team principle, which was higher than any of the other YOTs in the study.

Following the 2010 inspection, there was a shift from a predominantly risk-based approach to more holistic practice that took wider account of young people's well-being and of being alert to identifying and responding to their vulnerabilities. However, defining what safeguarding meant at a practice level could sometimes be problematic:

These kids are often very feral. What we are trying to address is the grey and woolly safeguarding issues as opposed to the obvious e.g. dad is beating everyone up or 5 year old Johnny is not getting any food. We are trying to look at the safeguarding issues of the teenage population. One of the biggest ones at present is snorting petrol; it's a huge issue around safety (WAP5).

Although there was an increased emphasis on safeguarding, practitioners continued to view risk identification and management as an essential element of their practice. Whilst the literature has criticised risk-led practice as focusing too much on personal deficits that is antithetical to a welfare focus (Case 2006), practitioners in Wales B regarded it as synergetic with meeting needs. The rationale being, risk identification was the means through which to identify need and to ensure the right resources and interventions were provided to the children/young people that required the most help and support. Practitioners in Wales A also liked the Scaled Approach (despite academic criticism of it as a model – see pages 12 and 13), as it fitted with their risk-focused philosophy. The Scaled Approach was something all YOTs commented on and is discussed in section 10.4.4.

This YOT more than any of the others, demonstrated the challenge in reconciling risk with having regard for young people's best interests and welfare. The team rated 'risk led practice' the lowest across the four YOTs in the ranking exercise, despite it having been one of their biggest influences and scored 'acting in the best interests' the highest. This may be a reflection of the shift in practice focus. The external influence of the HMIP inspection is also of interest as it impacted on the working of the team and as with England A, the recommendation was to take more account of young people's welfare. The importance of recognising safeguarding needs was repeated by practitioners in the interviews which suggested they agreed with, and had responded to the practice shift. Despite this, one practitioner in the team still raised the question of whether there could be certainty all team members shared the same ethos.

6.3.3 England B

Unlike the other two YOTs, England B appeared to have had a consistent ethos over time, without obvious change. Several respondents referred to the team being long serving and stable, practitioners worked in close proximity to each other in a single location, which contributed to the development of shared values and cohesive working practices. Practitioners described the team as child-focused and regarded offending as a by-product of unmet welfare needs (which stands in contrast to a possible stereotype of English YOTs as being solely risk-focused):

Broadly this team see children in trouble as children in need. The senior managers see children as children in need or at risk of harm to themselves and that filters through (EBP3).

A practitioner with a Probation Service background preferred the culture of England B, because it was child-centric. This is a comparative view of one organisation to another, but helps to describe the direction of practice in the YOT:

The Probation training was very risk-led and public protection orientated. It was refreshing to come from that background to a team that is child-centred. The operations manager and senior practitioners both have a Probation background but bring the child's needs and the risk the individual poses to the public together. You can have welfare and risk together manage it well. This way of working suits my ethos (EBP9).

The YOT did not rank 'best interests' as highly as the other YOTs and the second most preferred principle was 'protecting the public'. The explanation for this seeming tension was reduced offending protected the public and was best achieved by addressing children's welfare (which is close to what the AWYOS expressed as an effective means of youth crime prevention). As one respondent put it:

If you are acting in the best interests [of young people] then generally speaking you will also be acting in the best interests of the community (EAP13)

Despite this, England B rated risk-led practice more highly than the other three YOTs, which might indicate it was also regarded to be important to protect the public. However, responses (in interview) to questions about the role of risk and adherence to *National Standards* did not suggest this YOT had very different views to any of the others (see chapter nine). Indeed some respondents in England B were clear that simply meeting *National Standards* would not help young people, as what was more fundamental was relationship-building:

The staff here work within the criminal justice framework and all its sanctions but we encourage them to have meaningful relationships with young people. If it's just process - here are your appointments and your programme and it's reduced to tick boxing appointments – it won't work. Our staff develop very positive relationships with young people and engage with them. We know that we have relationships with young people that other agencies have not managed to achieve (EBP12).

This is not dissimilar to the views expressed by practitioners in England A that youth justice is a service that should relate to and respond to young people and their needs and not be preoccupied with adhering to managerialist processes. The question of consistency of approach and how it fitted with ethos was also raised. Other YOTs have questioned whether there can be constant delivery of a particular practice culture, but this quote suggests that practice that looked similar on the surface may be very different beneath it, which adds another layer of complexity when exploring culture as an influence:

I think the ethos is the same but the style of delivery can be different. If a young person misses a session we are very consistent in terms of when we give warnings and when we don't. There is not much variation in this. In terms of how [practitioners] see their role, you might see a difference. We had one worker who thought if he made their order as difficult as possible that [young people] would not come back. I am not sure about that as a style of delivery. I had one young people who I went to

see who was as hard as nails and all he did was cry and say how much he wanted to punch his worker. In my experience youth justice are a mixed bunch and some are more punitive than others (EBP8).

England A stressed the necessity of working with universal services to improve outcomes for young people, more than any of the others. The YOT manager had a firm belief the YOT should not operate in isolation and wanted the team to adopt this strategy:

We have a strong ethos of attempting to make other agencies do what they are supposed to be doing. We advocate for young people and do all the work that we like, but unless other services respond with somewhere decent to live and a school placement, it undermines everything we are doing. A kid is not going to stop offending by sitting in a room with one of my workers talking about why they did something. What is going to work for them is getting them some treatment if they are feeling uncomfortable with the thoughts that they are having or their drinking or smoking is out of control. These are the things that help them not [going through] work sheets (EAP12).

When the other YOTs were asked about the importance of working with mainstream services, all of them thought the YOT could not function properly without the support of other agencies (see chapter seven), but England B put more emphasis (than the others) on trying to get other services to accept their responsibilities, when interviewed about practice culture.

6.3.4 Wales B

Practitioners described the YOT as 'welfare-focused', however there were differences of opinion about how welfare-focused it was or should be, as some team members believed risk-led practice was more appropriate. Most practitioners considered they took a 'children first' approach: by concentrating on resolving young people's welfare needs. They were also dealing with the factors that influenced their behaviour, (a view that would accord with the *AWYOS*). They tried to achieve a balance with justice by encouraging young people to take responsibility and supporting them through any difficulties, so that they could complete their order. The YOT had given 'best interests' the lowest rating in the ranking exercise and 'preventing offending' the highest, which does not entirely accord with this, however it could be a reflection of the divergent views in the team about whether practice should be risk or welfare-led or that practitioners saw responding to welfare needs as an effective way of preventing offending.

The YOT was inspected in 2007 and criticised for being too welfare-focused and advised to adopt more risk-led practice. Whilst historically it had been child-focused, the impact of the inspection undermined this position to a certain extent, as it led some practitioners to question their role and function. Not all gave up the welfare philosophy:

I think we had a wobble for a while as we were not sure we were in the job we thought we were. We thought we were here to work with young people in a way that was appropriate to their development. We believe our approach is the right approach and in effect we have carried on in the same way (WBP4).

When a new manager implemented the inspection recommendations, risk-related practice became more prominent, which again highlights the importance of the manager's role in influencing the culture of the team, as well as inspection being an external influence on practice:

I feel the team has to be driven into a risk-based approach and old habits die hard. It has taken [the YOT manager] five years to improve it. We should not be negative and should go with it (WBP9).

The last two quotes reveal the tension in the YOT about how practice should be focused. This was most apparent in relation to non-compliance and breach. Some team members did not want to be driven by criminal justice processes and were reluctant to breach, whilst others sought to find a balance between what the system demanded, whilst trying to positively engage and support young people:

It is not about sweeping over the legalities. If you take as a given that young people have risk-taking behaviours and don't see the consequences, then I think there is a general ethos here that you do not start punishing straightaway that you try and establish a way of working with it (WBP10).

This YOT also commented on two factors the others did not: the impact of rurality in delivering services and the size of caseload. Whilst these are not philosophical considerations they affected the way the team worked. The YOT operates in a large rural area, from two localities, which are 55 miles and one and a half hours travelling time apart. One of the challenges for the YOT manager was to ensure that each locality provided a consistent service to children/young people, irrespective of the viewpoints of individual team members. There was little opportunity to meet informally to share views and experiences, in

the same way that practitioners in Wales A and England B did (they were single site YOTs). England A covered a widespread area, operated from a number of locations and had a significant rural composition. Its practitioners worked across the county as a whole and regularly came into contact with each other. This made the task of embedding cultural change easier to achieve, than in Wales B, where practitioners remained in their designated locality and where tensions continued to exist about whether child-focused or risk-led practice should be dominant.

Caseload size also influenced practice. Several practitioners in Wales B contrasted the experience of working in a much larger YOT (in England) or with the Probation Service which carries higher caseloads than YOTs. The advantage of a smaller caseload was more in-depth work could be undertaken with young people and more time spent getting to know them, which practitioners liked:

[Practitioners] will do the best they can and they do not like it if they think they have to cut time with the young people. They tend to spend an hour to an hour and a half on their appointments. This is partly the luxury of smaller caseload (WBP6)

By comparison, practitioners who had also worked in YOTs with much busier caseloads commented on the lack of face-to-face contact time in allotted appointments and the inability to do anything meaningful with young people:

It was a much higher caseload – like a conveyor belt – you saw kids but hardly did anything with them. All work was time limited because of the number of kids we were seeing, for example 17 over two days. It's welfare first and offending second in Wales B, you have the time to do the work and to follow things up, to offer more support, it's much better (WBP7).

I ran a caseload of about 20 high risk cases – it was a very stressful job - they expected results and you had to perform to meet the [YJB's] key performance indicators. It was a more process driven YOT that did well in the league tables. You would have appointments spaced at 15 minute intervals - don't tell me that you can do any good in quarter of an hour. Here, I could spend a half day with a young person and do far more high quality work (WBP9)

This suggests that one of the ways of handling a high throughput of cases is by routinising responses and there may be a correlation with YOTs with larger caseloads developing a

process-driven managerialist approach, which reduced the ability of practitioners to work in a different way, even if they wanted to. Other differences related to how teams were organised and the function of workers as a result. In Wales B practitioners were expected to work holistically with young people and other professionals (health, housing and education etc) to ensure needs were met, as well as delivering the core function of addressing offending behaviour. By comparison, a practitioner who had worked in a YOT with a high volume caseload described having the narrower function of solely producing pre-sentence reports (PSRs) and delivering offending behaviour programmes, which made it difficult to develop child-friendly practice:

There was an initial assessment team and then [young people] had to move on and if they moved up a risk then they moved on again. That is not good for building relationships. If they went into custody, the case would be passed on again. It is not good as they can be terrified about the prospect of custody, yet they are dealing with another new face, which is particularly difficult if you do not have any support from home (WBP7).

As with the other YOTs, the existence of a universally accepted team culture was questioned; some wanted to concentrate on improving young people's welfare and well-being and did not think that breach was compatible with this, whereas others were more risk and enforcement-led. One team member did not agree with the degree of welfare-focus shown by some of their colleagues, because they did not pay enough attention to risk. This practitioner described themselves as a 'risk manager', who regarded public protection to be as important as meeting young people's needs. This approach did not always fit well with the rest of the team:

I think that I am more rigid than other staff members in trying to enforce what young people do and may give them less leeway. There are far too many "how's your father interviews going on here" when there is plenty of time for good quality work. We are lucky in that respect, for me that is not just a chat. We are trained to challenge and that is what we should be doing (WBP9).

However, another team member had the opposite view and had left a YOT (in England) because they did not like the way practice was becoming more risk-led:

[The YOT] was working on a Probation Service model. I don't think it's an appropriate way to work with young people. There were masses of emphasis on enforcement –

you have missed an appointment, you have to follow that up within 24 hours and then send a warning, it was all about timings and processes. Then all the risk stuff which felt like it was much more about the process than the person. There would be less application of discretion and what was set out would be applied to the letter – that was de-skilling. It makes you feel that anyone could do this work, you don't need qualified staff. It is partly why I left as I did not want to work in this way (WBP11).

A similar observation was made by a practitioner in England B, who had also worked in a more process-driven YOT:

It was an ineffective service as young people did not get what they needed to prevent offending. Just turning up to report is not achieving anything. It is not an intervention, not protecting the public, not rehabilitating the young person, its not doing anything. If your intervention becomes ineffective because of National Standards it should not be there. Case intensity also meant that workers did not have the time to prepare the paperwork to address breach, so if things were going wrong they would just be covered up and counted as an acceptable absence (EBA6).

Similarly to England A, there was concern that too much focus on risk could be detrimental to looked after children, as their vulnerabilities were ignored in favour of the criminogenic problems they presented:

Their risks in terms of vulnerability increase by the very nature of their experiences and difficulties, but somehow it did not matter that they were in care, if they breached, they breached. No allowances were made for the reasons behind it. I think this escalated young people through the system, especially looked after children (WBP7).

As a YOT, Wales B tried to ensure this escalation did not happen and would not automatically instigate breach action, but examine whether young people were experiencing difficulties when they failed to comply, anticipate there would be problems and be aware that those with a lack of routine would struggle to fulfil a court order. Practitioners were expected to attend meetings with Children's Services to discuss cases, which had not been encouraged in more process-driven YOTs.

Wales B was the only YOT that commented on restorative justice to any significant degree. Some team members wanted it to have a higher profile than it did, as it was regarded to be

an effective way of bringing young people and the community together. Whilst this was an objective, it proved to be challenging to implement as there were varying degrees of acceptance (within the team) of how much prominence restorative approaches should have. The ranking exercise did not reveal an overall difference between Wales B and the other YOTs in the importance placed on restorative justice; some were advocates of it and others were not, which was a matter of personal preference. However philosophical resistance suggested there was less likelihood of restorative approaches being universally adopted across Wales B.

This YOT is interesting because of the polarity of opinion that exists within the team (as figure 6.2 demonstrated) and the likelihood practitioners will mediate not just national policy, but that of their own team, if they have a particular practice preference. It is also of interest as the criticism of practice raised by the inspection had not been fully resolved, allowing practitioners to develop a different ethos, exacerbated by the split site. Caseload size could also impact on the approach taken, as practitioner narratives revealed that YOTs with high volume caseloads might tend to be more managerialist, whereas teams with smaller caseloads have more time to adopt holistic child-friendly approaches. However, the differences in approach can be countered by a strong commitment to ensuring practice is 'best interests' orientated, as the experience of England A (which was ten times bigger than Wales B) demonstrated. This YOT moved away from a managerialist approach because the YOT manager did not want their team to work in this way.

Rurality also presents particular challenges. Practitioners in Wales B travel to see their caseload and advised the average round-trip could be 50 miles, taking an hour each way. This was not regarded as a barrier to delivering a good service as logistics encouraged using contacts with young people in a meaningful manner. This suggested the environment in which the YOT operated and the ethos of the team were in accord with the context within which practice occurred.

6.4 Summary of practice influences

This thesis aims to establish the extent to which youth justice practice in Wales is different from that in England because of the WG's adoption of a 'children first' approach. The views and perceptions of practitioners described in this chapter indicates there were no major discernible differences between the YOTs, which might indicate a particular model of practice exists in Wales that is distinct from that in England. There was consensus amongst respondents that the 'best interests' of children/young people should be a priority and

responses to them needed to go beyond simply addressing the narrow confines of their offending behaviour. Chapter seven, which examines practitioners' views about the links youth justice has to other services, also supports this.

All YOTs emphasised the relational elements of practice as part of the 'best interests' approach, as engaging young people, getting to know them and establishing trust and rapport were essential for successful interaction. Some YOTs had always practiced in this way, but for others the realisation they needed to, came from experiencing the negative effects of young people's disengagement with the YOT, because practice was not child-orientated enough:

We recognised we had reached a point where we were not seeing young people enough. They were just not turning up. If we are not seeing them how could we do any effective work with them? We have focused on forming relationships to avoid all that (EAP2).

However, whilst practitioners stated they wanted to focus on 'best interests', it could mean different things to different people. This raises the question of what practitioners understand a 'children first' approach to be. In overarching terms the importance of responding to welfare needs is evident as a 'children first' value (Haines and Drakeford 1998), but contemporary influences also feature, such as intervening early and protecting the public. The notion that young people 'will grow out of crime' and it can be part of an adolescent rite of passage (Rutherford 2002) does not feature in current thinking as practitioners consider it is better to intervene in some way than not, as the discussion around prevention and pre-court diversion in chapters seven and eight also found. Preventing offending is explained as a necessary function of public protection and for some practitioners 'responsibilisation' is important as it is viewed as an educative and preventative activity. This suggests the principle of 'children first' contained in the *AWYOS*, which Haines and Drakeford (1998:89) defined as one that should 'inform, guide and shape' all that youth justice workers do to minimise harm to young people and to maximise their potential, is open to wide interpretation and is a more complicated concept to deliver with all the other influences that prevail within UKG policy.

Where there were differences of opinion amongst practitioners it tended to be on an individual rather than a collective basis (within and across teams). There was a shared sense of direction within YOTs and across England and Wales, but some variation in how this was delivered. Practitioners offered various explanations about their working methods;

some leaned more towards a risk-led approach and others to a more child-centred approach. Cavadino and Dignan's (2009) analysis of youth justice typologies (which informed the ranking exercise), identified distinct approaches that can be dominant, but are not necessarily mutually exclusive, as elements of each typology can also co-exist. The preceding analysis indicates this applies not just at the macro-level (the system as a whole), but at the micro-level too (in the YOT). There were issues of importance in all of the teams that there was common acceptance of, but in all instances at least one team member (in each site) questioned whether a common ethos could exist. The point of tension in most instances was how and whether to enforce court orders when young people were not complying and whether YOT practitioners should become agents of (further) punishment by instigating breach action, because of its consequences.

There was a wide degree of difference in what individual practitioners would tolerate and do, which spanned having a personal philosophy of not breaching anyone ever, to offering little leeway irrespective of the situation and circumstances. The negative effects of strictly adhering to *National Standards* were not regarded by some to reflect a 'children first' approach, as tightly prescribed breach action propelled young people to custody to an unacceptable degree. However, despite this, practitioners used breach (with management oversight and support); even though some stated they could make defensible decisions not to. Chapter nine illustrated that levels of breach rose steadily until 2006/7 (and continued to rise in England until 2008/9), however feedback from practitioners in Wales, did not suggest they were doing anything differently to their counter-parts in England and views were similarly varied about how young people should be treated.

There was recognition that taking a 'tick box' and formulaic approach to supervising young people could mean individual needs became subsumed into concern about following processes rather than acting in the 'best interests' of children/young people, whereas others placed risk-related issues at the forefront of what they did and believed it was the right thing to do. This indicates that how 'best interests' are determined is open to wide interpretation. Also, whilst chapter ten will identify there is significant practitioner support for the youth justice system having *National Standards* that YOTs adhere to, there were elements they disliked (whether in England or in Wales). This was particularly when 'best interest' principles were compromised and the consequences of prescription meant lack of contact time with young people, lack of scope to develop relationships with them and too much focus on delivering offending behaviour-related activity to the exclusion of anything else, including addressing wider welfare needs. Practitioners who had worked in more managerialist cultures described them as pressurised, performance management orientated, with concern

for placement in YJB league tables. For some this was not child-centred practice as it did little to help young people with their fundamental needs; the aim was simply to get them to the end of their order. Difference between YOTs may therefore not be about philosophy (local or national), but about caseload size, how functions are organised, how the YOT manager wants young people to be supervised and whether staff are directed and supported to work in a particular way.

Other than national policy, the approach of the YOT manager and the recommendations from inspections emerged as important influences on practice. National policy was mediated in the local context in the first instance by the YOT manager, who could push the YOT towards or away from what a particular policy intended. There were similar ideologies between the four YOTs which did not reveal a marked difference in thinking between those in England and in Wales, but related to the beliefs and experiences of the managers and what they wanted their service to deliver:

I was in the YOT management board when the YJB representative told me I was too child focused, which I found to be one of the most unhelpful statements that could have been said to me. My response was that was the way it was going to be and you need to change because the YOT would not.

The influence of inspection on YOT practice is of interest as managerialism has traditionally been associated with monitoring adherence to processes and procedures (Souhami 2011), rather than having concerns about child welfare, even though this was one element of the inspection criteria between 2009 and 2014.²² In this period YOT inspections examined 'safeguarding' (action to protect the young person), 'risk of harm to others' (action to protect the public) and the 'likelihood of re-offending' (HMIP 2009b). This study has shown the inspection recommendations impacted on practice in different ways; two YOTs were not welfare-orientated enough and one not sufficiently risk-focused. Inspection therefore appears to have the possible function of 'calibrating' practice, to find balance between the two, or the differences may be due to equivalent differences in the ethos of different inspectors or inspections themselves are not necessarily consistent.

Haines (2010) contends that 'dragonisation' has resulted in a particular model of youth justice emerging in Wales and Cross et al, (2003) that there may be more of a 'children first' approach to practice in Wales than in England. At practitioner level this does not appear to

²² These changed in May 2014, although the current thematic areas are broadly similar.

be the case as those interviewed in England did not lean more towards the risk-based approach, any more than practitioners in Wales leaned more towards a welfare-based service. It is also apparent that practitioners will resist change in either direction depending on their personal philosophy. The findings indicate both viewpoints co-existed in each of the teams and practice had been adapted at various points towards one or other approach. There are differences at a policy level in Wales (as the literature review identified) and Swansea YOT has sought to implement rights-based practice in preference to any other approach (see section 8.4.2), but this is possibly in the same way the YOT managers in this study wanted their teams to work in a particular way. Whilst none of the YOTs laid claim to their practice being rights-led, all considered it reflected a 'children first' philosophy, although may not have chosen to describe its particular features in this way (see also chapter ten).

6.5. Influence of the All Wales Youth Offending Strategy

The differences in team philosophies and between individual practitioners in their views about youth justice, suggested that it was worthwhile to explore the attitudes of those in Wales A and Wales B, towards WG policy and whether and to what extent it influenced what they did. One of the relevant questions in this study is whether practice differs in Wales as a result of the AWYOS and the 'dragonisation' of youth justice. This relies on whether YOT practitioners in Wales are aware of the strategy and based on that awareness, they agree with its contents and as a result, work in a different way to their counter-parts in England.

There was consensus in Wales A and in Wales B that the WG should have a clearly defined view about youth justice, although there was some difference of opinion about whether it should be a stand-alone position or a joint one with the YJB. Those in favour of the WG having its own viewpoint felt it was important because Wales is a country in its own right, that should have policies that relate to all aspects of its citizenship, including how children and young people who come into contact with the criminal justice system are treated:

Having our own government even with limited powers should say something about youth justice. We should be able to influence how we feel things are different for children and young people in Wales. They are responsible for all the services we might refer young people to, so it is important (WAP9)

Practitioners felt there was a need for a specific Welsh youth justice strategy because UKG policies could be too Anglo and urban-centric and the metropolitan concerns of England had little relevance to rural Wales. Wales was simply expected to follow England and its needs

could get lost in the bigger picture. The YJB's directives to implement particular policies were sometimes meaningless when the type of crime they were targeted at were not prevalent in Wales:

They [the YJB] have also been a bit too prescriptive when they say things like what have you spent on knife crime and when we say we don't have it, they have said it is not good enough, but it's the only answer that we can give (WBP6).

Others were in favour of a WG specific strategy because of the potential that further devolution offered:

It's very important for Wales to have its own statement about youth justice as there is a lot going on around devolution and I like that there is an interest and concern about how we work with youth justice in Wales and how we make those decisions (WAP3).

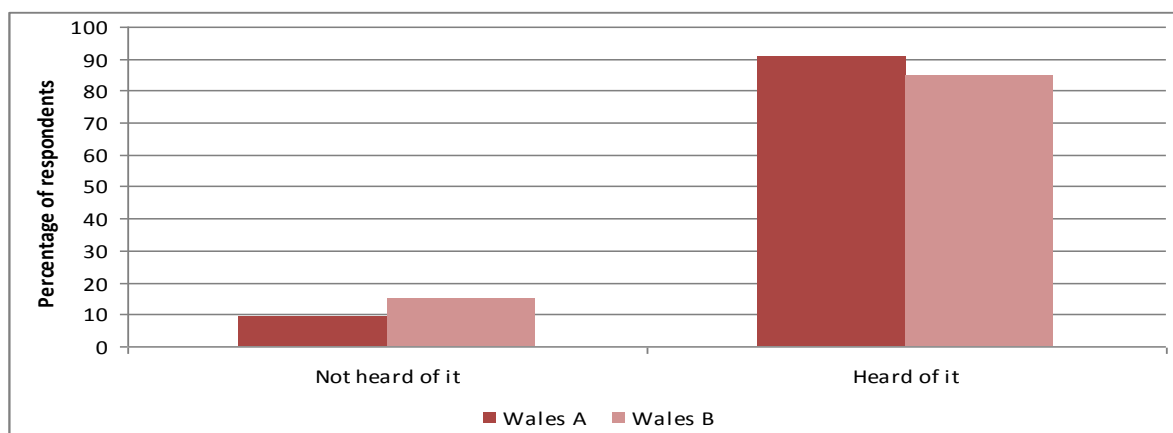
Welsh YOTs were therefore supportive of the WG influencing youth justice and although there were some differences of opinion about why this was important, there was agreement there should be policies and strategies that specifically related to Wales. Practitioners were asked about their knowledge of the *AWYOS* and whether it impacted on what they did (figure 6.4). Eighty-eight per cent of respondents had heard of it, but 12% had not. However, most of those that were aware of its existence were unaware of its contents. If pressed, some reference was made to the statement 'children first, offenders second', but this was not guaranteed (this is discussed more fully in chapter ten). Typical comments included:

I am aware of the *AWYOS*, but I do not know anything about it or its contents, just that it exists. I assume that we work in line with it, but for me personally I have not read it (WAP8).

I could tell you about the Scaled Approach but not the *AWYOS* (WAP8).

The second example is of interest as it demonstrated that a practitioner working in Wales was more knowledgeable about a risk-led practice approach introduced by the YJB, than a key WG document about youth justice.

Figure 6.4: Level of awareness of the AWYOS by practitioners in Wales A and in Wales B



Practitioners who had heard of the *AWYOS* were not always sure how they had come across it. Most, who commented, thought it ‘might’ have been sent out or ‘mentioned’ by the YOT manager, although one of those interviewed confused it with the annual youth justice plan YOTs are required to produce. Neither of the YOT managers indicated it was something they routinely drew their team’s attention to. This might be because the document was ten years old, concentrated on strategy and did not offer any detailed practice guidance. However, because it is about youth justice in Wales and the joint vision of the WG and YJB, the lack of interest is surprising, particularly as there was a strong feedback (from the interviews) that Wales should have its own policy.

Practitioners knew little about the existing strategy, which makes it potentially problematic to determine if the *AWYOS* has any impact. Unsurprisingly, and to the extent that practitioners could form a view, it was generally regarded the influence of the WG on practice was weak. Chapter six identified that practice is significantly influenced by the YOT manager, and this also applied to the extent to which they had promoted the *AWYOS* to their teams. Practitioners had an expectation their manager would sift what was important and draw their attention to it, so they would know what the practice priorities were:

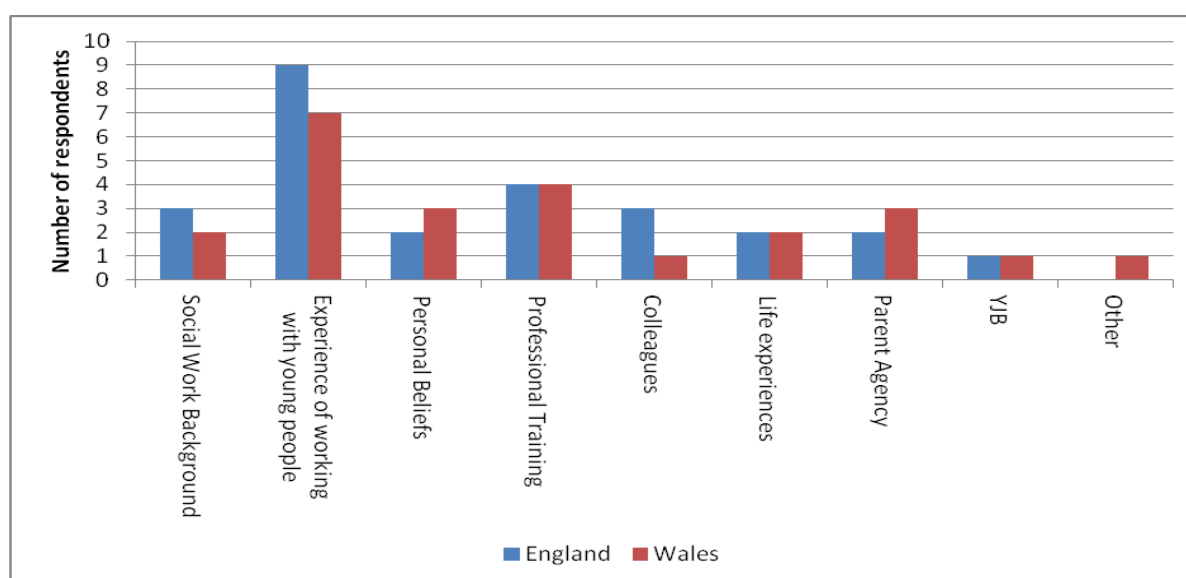
We rely on the manager to look at these things as there are reams and reams of strategies. It is too much for us we need someone to point us in the right direction that is the manager’s job to tell us about what we need to know (WAP10).

For some, the question of influence, particularly the ‘children first’ philosophy had less to do with the *AWYOS* and more to do with their personal values:

I don't think the Welsh Government is the thing that drives practice. 'Children first' is more to do with the style of people that work in youth justice than the government's approach. It's about people who want to work with troubled teenagers that have an aptitude for it and about doing right by the youngsters (WBP6)

This suggested that it was relevant to explore what practitioners considered influenced their practice. The responses were coded into a number of groupings (see figure 6.5). Although some gave answers that could fit into several categories e.g. having a social work background, undertaking professional training and having particular personal beliefs, the first reason given was the one that was categorised. It is accepted this is a crude measure of views, but it does give some indication of their thinking and how it might relate to interest in policy.

Figure 6.5: Influences on practice – a comparison of viewpoints from practitioners in England and in Wales



The primary influence was 'experience of working with young people', however, when the other responses were examined, most had a relationship with this. The main motivations were wanting to understand how young people function and develop, either as a result of social work or other professional training, from personal experience (positive and negative) that resulted in a desire to help others, from the culture and ethos of the parent agency and beliefs about how young people in trouble with the law should generally be treated:

Having a social work background.....I think of adolescent development and what happens to young people at certain points in their lives and how family dynamics influence behaviour (WAP8).

I believe that young people get into trouble because there is a lot of complex stuff in their lives. Hitting them hard and punishing them does not work. We need to support them to improve their lives (EAP2).

The YJB received the lowest response to influence and none of the practitioners in Wales mentioned the WG. The two workers that talked about the YJB were relatively new to youth justice; one having recently been seconded from the Probation Service to an English YOT and the other had joined a Welsh YOT as a support worker. Both were still at the stage they were relying on direction to do their job, but in different ways:

The YJB influences me more than anything at this stage; the Scaled Approach and guidelines around working with young people (WBP12).

One of the differences from Probation is that I am now dealing with youth custody and it has been useful to refer to relevant materials as it's so different to adult custody; the [YJB] placements team, what you have to do for young people etc. (EAP3).

It was also apparent from other responses that practitioners are generally not interested in strategy, as there were several references to this when UKG policy was being discussed:

It fits with what the management do. It's remote from me. I don't really have an opinion on it, as it does not really feature in my work (EBP10).

I don't think they [the YJB] influence how I work as a social worker that is something I have developed over the years (WBP7).

This suggests that lack of knowledge of policy may not be a fundamentally Welsh problem, as it is likely that practitioners in England would not be any more familiar with the contents of key policy documents that have largely applied in England, than Welsh practitioners were of the AWYOS. Information supplied from the fieldwork interviews, indicated that practitioners tended to develop knowledge through their own experiences and by discussing cases with their colleagues:

The YJB does not influence my practice with young people that has come from 20 years of working with young people, their families, adults and communities in this field [substance misuse] (EBP8)

It comes from instinct, learning and sharing experiences with colleagues, particularly those who you think can help – finding out what they think. If someone wants to know how to do something, they are more likely to chat to a colleague, than to take a manual off the shelf (WBP6).

Space does not allow this to be explored further, but the indications were strong that what practitioners want is relevant practice guidance and materials they could put in their 'personal toolkit' of resources, to assist them to work effectively with young people or to resolve particular problems. Strategic documents are of less interest, as they are removed from the reality of day-to-day practice. This, when combined with reliance on the YOT manager to direct them to appropriate resources, helps to explain the apparent lack of interest in the AWYOS.

6.5.1 The influence of the YOT Manager

The YOT managers, who are closer to policy than practitioners, also had reservations about WG influence. Both managers agreed the WG was showing a greater interest in youth justice than had previously been the case and was seeking to influence those elements of the system it could, notably the prevention of offending and resettlement from custody (see chapters seven and nine). The WG had become more visible in youth justice in recent years, which they attributed to a change in personnel. This had led to increased contact with YOTs and some of the strategic partnerships with which they engaged, which was welcomed. However, despite this neither manager considered that distinctive policy had emerged and the influence of the WG remained 'neutral'.

The Welsh Government did not feature on the event horizon and until recently there was no apparent policy²³. Some of the [Welsh Government] policies have now got youth justice indicators in them, but there has been nothing from it that says you must do this or that (WBP6).

This is surprising given the direct funding the WG provides to YOTs in Wales through the Youth Crime Prevention Fund (see page 54). Additionally, during the research period, a

²³ This is a reference to the Green Paper issued by the Welsh Government in 2012.

Green Paper was published in 2012, that set out proposals for strengthening youth justice in Wales, which contained some of the most significant statements about it, since the publication of the *AWYOS* in 2004. It was recognised the WG had ambition with regard to youth justice, but there was doubt as to where it might lead:

I think that some of the Welsh Government's aspirations through the Green Paper are a good thing as they are looking to extend entitlement where they can and to expand their reach, but they are a bit of a toothless tiger. I see them as another partnership agency rather than a key driver of youth justice in Wales (WBP2)

Apart from the *AWYOS*, other WG agendas were mentioned because of their impact on YOTs. This included the promotion of young people's participation in decision-making, derived from the WG's commitment to the UNCRC, which is discussed in chapter ten. The other influence was the regionalisation agenda in Wales, which encouraged local authorities to develop more collaborative and cost-effective working arrangements (see for example the Commission on Public Service Governance and Delivery (2014)). Some respondents felt there was more the WG could do to influence the organisations YOTs work with to improve outcomes for children and young people, notably through education and health policy and networks. Chapter four discussed the work-strands the WG had been developing to achieve this, but the comments from the YOTs suggested there was a lack of awareness of what the WG was doing within its devolved powers. Further, the interest of the PCCs in youth justice was noted by one of the managers, as it presented the opportunity for there to be more of a joined-up agenda between the YJB, WG and PCCs, suggesting the strategy for Wales should not rest solely with government departments, but be expanded to include other significant partners.

The overall picture was therefore one of a lack of knowledge and awareness of the *AWYOS* amongst practitioners in Wales and an absence of promotion of it by YOT managers. As a result the WG's views about youth justice were not well-known and the impact on practice was negligible. This lack of profile amongst the practitioner community stands in contrast to the importance that has been placed on the *AWYOS* and its principles, in academic commentary (for example, Haines 2010). This reveals an inconsistency between the perceptions of the WG's influence on practice in Wales and what actually happens. This is a problem for the 'dragonisation' theory as it proposes WG policy (from the *AWYOS*) is universally known about, accepted and is directly transferred into practice. It also reveals there is a problem about how the strategy is communicated by the YJB and WG to the youth justice sector and within the sector to practitioners at a local and operational level.

Chapter Seven

Targeted Prevention

7.1 Introduction

The youth justice system has the statutory aim of preventing offending and this was initially understood to be re-offending, however the YJB extended the definition to mean the prevention of young people becoming involved in anti-social and pre-criminal activities (YJB 1999). Prevention is discussed in this latter sense in this chapter. It is of interest as it is non-statutory practice and therefore does not require devolution for the WG to influence what happens in Wales. The chapter explores the development of UKG initiatives in targeted prevention and the views of the WG about preventative activity. The impact in reducing the numbers of young people entering the system is discussed in the next chapter, as it also encompasses pre-court diversion.

7.2 Prevention and early intervention

One of the key questions around prevention is who should 'own' it and therefore deliver it. The risk factors that may predispose a child/young person to become involved in crime or ASB are linked to individual, family, school or community factors (Utting and Vennard 2000 and Communities that Care 2005). This suggests that mainstream non-criminal justice agencies such as children's services, education and health should be responsible for addressing the relevant needs. However, as a result of the YJB expanding the definition of prevention to mean stopping offending behaviour before it started or became established, it made prevention the responsibility of the criminal justice system. YOT-led preventative activity also encroached on what the Youth Service had been doing, which was to engage young people in purposeful and educative activity to promote social inclusion.

The YJB's approach may well have developed as it did, because there was a lack of understanding on behalf of universal services that preventing offending could also be their responsibility, as averting poor outcomes for children/young people, is a theme that runs cross-departmentally across a number of UK and WG policy areas (Nacro 2006). Critics of the YJB's policy considered it failed to integrate prevention with other child and adolescent policies and detached it from what universal services should have been doing (Homel 2005). The Audit Commission's review of the reformed youth justice system in 2004 recognised the tension of YOT involvement and recommended that (Audit Commission 2004:6):

Better still, mainstream agencies such as schools and health services, should take responsibility for offending by young people.

The YJB's view was this was unrealistic, because mainstream agencies were not fulfilling their (statutory) responsibilities to children/young people. As a result prevention would be 'part of YOT core business' and ring-fenced funding would enable YOTs to work with other services to ensure young people got the support and assistance they required (Ashford 2007:17).

The central thrust of the YJB's policies between 2000 and 2010 was targeted prevention, focused on the identification of those 'at risk' of entry to the youth justice system, through Youth Inclusion Programmes (YIPs) or multi-agency Youth Inclusion and Support Panels (YISPs). Participation in both programmes was voluntary. YIPs were aimed at the 'top 50' young children/young people (aged 13 to 16 years) in deprived neighbourhoods deemed to be at risk of entry to the youth justice system (Morgan Harris Burrows 2003:4). The aim was to reduce arrest rates and recorded crime by engaging young people in constructive activity and re-engaging them with education (the latter had not formerly been regarded as youth crime prevention). YIPs would sit alongside the competing interests of ASB measures and universal provision to tackle poverty and lack of opportunity (YJB 2001). YISPs were crime prevention panels, made up of local agencies whose role was to identify and provide support to children aged 8 to 13 years at risk of offending and ASB (Walker et al, 2007). YIPs first appeared in 2000 and YISPs in 2003; provision significantly expanded as funds were increasingly made available, because the YJB believed in their efficacy in youth crime prevention (YJB 2004). In 2000 there were 70 YIPs in England that had increased to 100 YIPs and 220 YISPs, in England and Wales by 2005 (YJB 2006). In 2010/11, the YJB was providing YOTs with £31.45 million in direct grants for prevention services (YJB 2010a).

YIPs and YISPs were only part of the picture as a number of other preventative initiatives were introduced such as Positive Futures projects (with Sport England); holiday SPLASH schemes (purposeful activity for young people in school holidays) that began as a joint prevention initiative between Sport England, the Home Office Drug Strategy Unit and the Football Foundation; Safer Schools Partnerships (which started in England with the support of the Department for Education (DfE); and Positive Activities for Young People, supported by the YJB, Home Office, the Department for Culture, Media and Sport, the DfE and the Big Lottery. Whilst YOTs were the lead agency in delivering targeted prevention there was significant over-lap with a wide range of other organisations, working towards similar goals.

The growth in prevention activity in England prompted the YJB to comment in 2003, that because of different funding streams in Wales there was a need to work with the WG and local partners to ‘achieve comparable targeted prevention activity’ to that of England (YJB nd.a:6). The non-statutory footing of pre-offending prevention presented the WG with an opportunity to engage with and influence this agenda in Wales. Indeed, the availability of WG funding extended the reach of preventative services across Wales; one of the difficulties being that localities with small caseloads (in rural and small local authorities) could not achieve the numerical threshold (50 young people), required to attract UKG funding to start a YIP. In 2003 the WG made available the Safer Communities Fund²⁴ to support the implementation of the AWYOS and to provide funds that would resource wide-ranging targeted preventative work. This included YIPs, YISPs, SPLASH Cymru holiday activity schemes, projects using arts and sport and others that could improve access to devolved services.

One of the founding principles of the WG is universalism and this raises the question of its position in relation to targeted prevention. *Extending Entitlement* identified such services are required to (NAW 2000: 59):

Assist those with serious problems but they should be firmly located in a universal structure that delivers access to mainstream provision, to avoid young people at risk of offending, becoming stigmatised by services that solely focus on the possibility of offending behaviour and not on connection to mainstream activities and education.

YIPs and YISPs contained some of the elements the WG would endorse; they targeted young people with specific needs (albeit from a risk and not welfare basis – so not entirely a ‘children first’ approach) and aimed to connect them with mainstream services, particularly education. However, other characteristics were in tension with a ‘children first’ approach; the lead agency (the YOT) for the co-ordination of YIPs and YISPs is a criminal justice agency and YISPs targeted children under the age of criminal responsibility (in both instances, there was a risk young people would be labelled and stigmatised because of contact with the criminal justice system). It could therefore be suggested the WG, in its alliance with the UKG, placed more importance on the targeted (rather than the universal) element of preventative work, than might have been expected. The WG promoted targeted prevention across Wales and included it in its funding criteria for YOTs²⁵ (WAG/YJB 2004, 2008 and

²⁴ Now the Youth Crime Prevention Fund

²⁵ YIPs and YISPs appeared in the Safer Communities Fund funding criteria between 2003 and 2012.

2009). Further, what might have been considered to be very different positions were reconciled in a joint WG/YJB prevention strategy (WG/YJB 2008) which simultaneously set out a vision of universal provision (the WG's approach), with risk-led targeted prevention (the UKG approach) and early intervention characterised by formal contact with the criminal justice system (the UKG approach).

7.3 UK Government policy shift – 2008 onwards

From 2008 onwards there was the start of a shift in UKG policy about where preventative services should be located. This was the outcome of the combination of a number of factors; austerity which contributed to several funding cycles coming to an end, the re-direction of funds from one source (Home Office) to another (PCCs) and the progressive removal of ring-fenced funding for YOT activities. The combined effect was the contraction of YOT prevention funding and a policy shift (away from YOTs) towards mainstream agencies taking greater responsibility for this activity.

A number of changes occurred in the prevention landscape from 2008 onwards. It was agreed that 14 YOTs could pool their prevention funds with the Youth Service (YJB 2008c), thereby connecting them more. In 2009, it was reported the DCSF (in England) would be taking 'ownership' of prevention (YJB nd.e:14) and by 2012, a *new* [my emphasis] approach emerged, as mainstream Children's Services would address the needs of young people most at risk of offending. YOTs would be partners in this, but crucially not the lead agency (YJB 2012b). The YJB started to describe pre-court diversion as a preventative activity and would be working with the UKG and WG to 'shape and influence' emerging prevention strategies, whilst at the same time continuing to advocate for targeted prevention (YJB 2012b:11):

'Evidence-based early intervention and diversion delivered through multi-agency partnerships, can be effective we will promote joined up youth crime prevention and work with partners to monitor and support the implementation of new out-of-court disposals framework'.

Home Office prevention funds that had been ring-fenced to YOTs were re-directed to the PCCs, who would be able to commission services in their local area (YJB 2013a). In many respects this was the final straw for targeted prevention in England, as YOTs retrenched to their statutory base (Carol Goldstone Associates 2010; House of Commons Justice Committee 2013). All of these developments indicated the prevention agenda in England

had taken a 360 degree turn, as the position looked increasingly as though YOTs would solely focus on the prevention of re-offending (in England) and not on any other permutation of it. Further, the partnership element of prevention would incorporate the police as well as universal services.

7.4 The Welsh Government's position

In 2012, the WG indicated that with the YJB it endorsed multi-agency targeted youth crime prevention and would financially support 'projects aimed at diverting children and young people who have committed a first offence/less serious offence away from crime and anti-social behaviour into mainstream services' (WG 2012b: 5). This statement is of interest as it relates specifically to pre-court diversion as well as targeted prevention activity, which the Welsh Government had traditionally funded. Also, there was an explicit indication of working with mainstream family-focused provision such as Families First Teams²⁶ in Wales in the same way as the Troubled Families initiative²⁷ in England, although these initiatives had a different orientation in their intent (see footnotes).

An evaluation of the prevention activity supported by the WG (between 2006 and 2009) conducted by Cardiff University et al, (2009) indicated the availability of WG funding provided an opportunity for Wales to take a different and potentially more innovative approach to prevention and diversion than England, but implied this had not happened. It recommended the WG could be clearer about the nature of the preventative interventions it wished to promote. This could have meant departure from 'alignment' with the YJB and the risk-led approaches of YIPs and YISPs, although these prevention programmes do not significantly feature in the Cardiff University evaluation. For example, policy in Wales could have focused on other forms of preventative activity, such as the promotion of internationally recognised evidence-based prevention programmes, earlier adoption of measures to influence pre-court diversion or a clearer strategy about what mainstream agencies should be doing to ensure that universal entitlements were unconditionally available to those in the justice system. The position with regard to YIPs and YISPs stood in contrast to other WG strategies for children/young people as preventative services would be coordinated by a criminal justice agency, rather than through universal provision.

²⁶ The programme provides support to children and their families living in poverty. Each local authority in Wales is required to produce a Families First action plan that sets out what preventative action and early intervention it will take.

²⁷ This is a UKG initiative that was launched in 2011, which targeted the 120,000 most 'troubled families'. The focus is different to that of Wales, as the aim is to work with those with serious social problems, namely households involved in crime and ASB, those with children not in school, families with an adult on out-of-work benefits and those who create high costs for public services.

WG funding has always aimed to prevent crime and divert young people away from ASB and offending (Cardiff University et al, 2009). There is no published information (to my knowledge)²⁸ about what is funded, so there has to be a degree of conjecture about the direction of travel. A number of the WG guidance notes to YOTs about the funding criteria were examined to determine priorities²⁹. From inception, collaboration with other agencies has been central to how funds would be directed. From 2003 onwards, YOTs, Community Safety Partnerships and Children and Young People's Partnerships were required to identify local causes of, and responses to youth crime. The main types of funded activities between 2006 and 2009, were youth projects (26%), ASB initiatives (24%) and youth crime related activities (21%), of which directed-leisure activities formed a major part (25%) (Cardiff University et al, 2009). The WG funds continue to be distributed on the basis of identified needs, but now on a regional rather than a local authority basis³⁰. Funding guidance for 2013/14 confirmed the inclusion of pre-court diversion but also the continuance of projects that would deliver collaborative outcomes in multi-agency targeted youth crime prevention, as well as those that would strengthen the role of devolved services in supporting youth crime prevention (South Wales Argus 2013).

7.5 The efficacy of targeted prevention

As such importance was placed on targeted prevention by the YJB and WG for over a decade and the YJB in particular, advocating for retaining YOT involvement in delivering these services, the issue of efficacy is relevant. However, the varied programmes, services and interventions that contribute to targeted prevention make it challenging to find a common way of measuring the different activity and determining what works at all, let alone what works best (Independent Commission on Youth Crime and Anti-Social Behaviour 2010). This was further compounded by prevention having different target populations and thresholds for entry to programmes/services. For example, YIPs worked with young people who had committed anti-social acts, who had been arrested and not been arrested, as well as those with a problematic relationship with education (O'Malley et al, 2014). These populations are not necessarily mutually exclusive. There are also differences in the way professionals view and make decisions about at-risk children/young people, what their expectations of preventative services are, and whether they direct young people to the most appropriate source of help (Mackie et al, 2008). Indeed, O'Malley et al, (2014) found some of the main

²⁸ Aside from some information in the Cardiff University et al, (2009) report.

²⁹ The guidance was issued to YOTs but not made available to the general public

³⁰ Since 2012 the WG has encouraged collaborative/regional working amongst the public sector to improve efficiencies and to deliver more effective services.

referrers to YOT prevention services, notably education (37% of referrals) and children's services (15%), were the agencies that might also have provided the preventative support. Assessing efficacy is also challenging because there is limited evidence about the precise nature of YOT preventative interventions. YIPs had two main types; engaging young people in constructive activities as a means of diversion and addressing identified risk factors. These interventions fell into three categories; those designed to engage a young person; to maintain their involvement; and to support their exit from the programme (Mackie et al, 2008), but the distinctions between each category were blurred. In aggregate, sport and group development were the most frequently cited (21% apiece), followed by education and/or training (18%). Further, practitioners delivering preventative interventions could not describe 'a typical prevention package' (ibid: 3) beyond indicating it would be designed to address individual needs (O'Malley et al, 2014).

Whilst universal provision aims to improve outcomes for children/young people generally and YOT-led activity, in preventing ASB and criminal behaviour explicitly, there can be a degree of conflation between the interventions offered. For example, engagement in constructive activity is provided by mainstream services, not offender-specific provision, irrespective of how the need has been identified (the justice or non-justice route). Unless there are other concerns that link it to offending behaviour, disengagement from education will be regarded as a welfare and not a criminogenic problem, however the treatment is the same; re-entry into appropriate provision. Sport-related activities also feature prominently in preventative interventions, even though their effectiveness in youth crime prevention is unproven (Nacro 2008) and it is questionable whether the efficacy of prevention should be judged in these terms.

The impact of most prevention activity has not been evaluated. The Criminal Justice Joint Inspection (2010:31) reported that despite the commitment to YOT preventative activity, there was very little idea of what 'success looks like'. The evaluation of the effectiveness of WG funding in Wales reported that whilst the 'de-criminalising ambitions of the AWYOS and the *Extending Entitlements* policy agendas' were met, and the competing priorities of the WG and YJB were apparent, it was unable to conclude what the impact had been on the prevention of offending in Wales (Cardiff et al, 2009: 56). The evaluations of YJB-funded activity were also inconclusive about the impact on behaviour. This was because YIP outcomes measured arrest rates, which are 'not a direct and unequivocal measure' of criminal behaviour, as arrests do not necessarily lead to criminal convictions (Mackie et al, 2008:148). Also, as some young people had not offended either before or after their involvement with the YIP, there was no basis for comparison (Morgan Harris Burrows 2003).

In addition, studies that examined the risk factors of those referred to YISPs and YOT-led targeted prevention services, based on numerical risk ratings³¹ at the start and end of involvement, found not unsurprisingly that according to practitioner assessments, risks reduced and concluded this could therefore be regarded as a measure of successful intervention (Walker et al, 2007; O'Malley, et al 2014). However, neither of these studies could draw any explicit conclusions about the relationship between risk reduction and youth crime prevention, nor did they acknowledge the possibility there might be an incentive for practitioners to down-grade risk scores to close cases, or as a means of demonstrating 'success', or that determining when someone who has not offended is no longer 'at risk' is a potentially problematic judgement. For all of the reasons cited above, it suggests that pre-offending prevention is challenging to pursue in policy terms, as the evidence is not clear cut enough about its effectiveness or indeed how it can be measured.

7.6 Anti-social Behaviour

The discussion of ASBOs and ASB is relevant to this chapter, as ASBOs were initially introduced as a preventative intervention, with the intention they would only be used in exceptional circumstances for children/young people (Nacro 2003). In 2007, when setting out a proposed prevention strategy for England and Wales, the YJB included tackling ASB and recommended that young people, who had been identified as committing anti-social acts, should be referred to and supported by YOT-led prevention programmes (Ashford 2007). ASBOs could be imposed on children and young people aged ten or over (for a minimum period of two years), who were deemed to be causing 'harassment, alarm or distress to one or more persons not of the same household' (Crime and Disorder Act 1998). They could contain conditions that included curfews, restrictions on movement in specified localities and prohibited behaviour. ASBOs could also be made in court when sentencing for a criminal offence, even though the ASB was unrelated to the original charge (they were commonly described as criminal ASBOs - CRASBOs). Although a civil order, breach of an ASBO was a criminal offence punishable with up to five years imprisonment.

The ASB agenda blurred the distinctions between civil and criminal justice systems, increasingly criminalising non-criminal behaviour, which was considered to breach human rights, European law and the UNCRC (Rowlands 2005). Rights-based criticisms related to the ease with which ASBOs could be obtained, the lack of definition of what constituted ASB, the broad range of prohibited behaviour that could be imposed, the open publicity (naming and shaming) that could surround cases (in contrast to the presumption of anonymity in the

³¹ This was from risk rating scores in the Onset assessment. Onset was used to assess prevention cases in a similar way that Asset was used for statutory cases.

youth court) and the serious consequences of breach; particularly as children/young people could be incarcerated, despite never having been convicted of a crime (Gil-Robles 2004; Rowlands 2005; Scraton 2005; Gask 2006; Brown 2011). Further, there was no surety an ASBO would address the causes of ASB, and high breach rates suggested they were ineffective (Solanki et al, 2006). There were also concerns about the ability of some young people to comprehend why an ASBO had been imposed and to comply with the restrictions (Rowlands 2005). Alvaro Gil-Robles (2005:36) when the Council of Europe's Commissioner for Human Rights, questioned the application of ASBOs for children and young people:

There is a world of difference between hassle and harassment. It is not because a child is causing inconvenience that he should be brought to the portal of the criminal justice system.

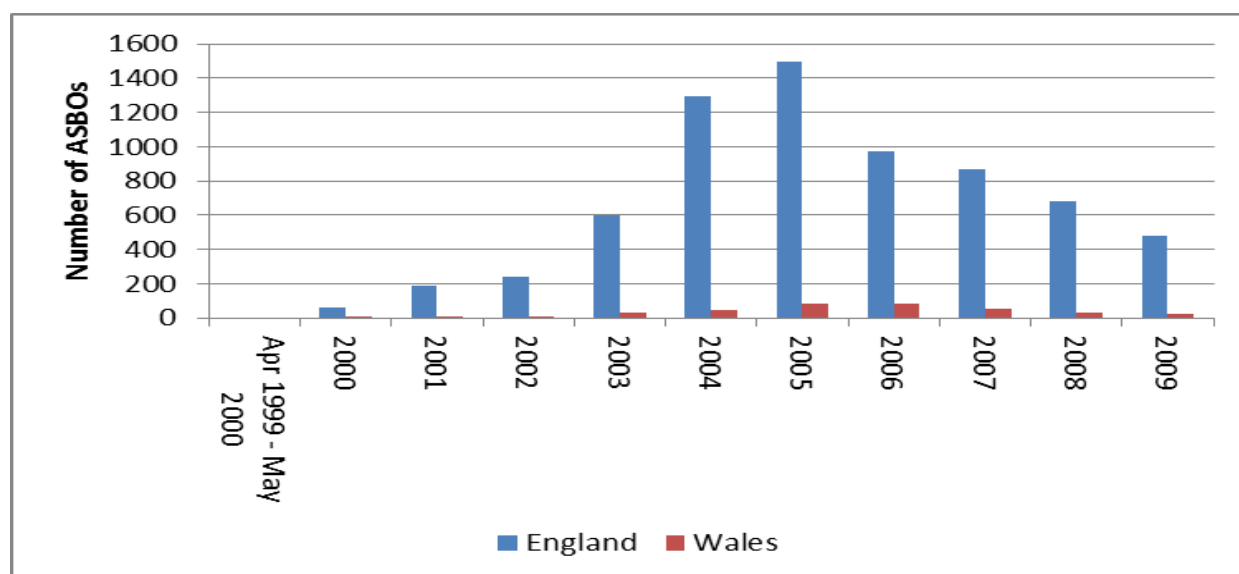
In intent, the ASB agenda was the opposite of the targeted preventative approach, which sought to help and support, rather than punish and prohibit. Further, depending on the local authority, its approach to ASB and the availability of YOT-led prevention programmes, young people committing the same type of low-level nuisance could find themselves referred to the local authority for ASB or the YOT's prevention service and face very different outcomes. Such was the UN Committee's concern about the use of ASBOs that it recommended an independent review be conducted into their use with a view to abolishing them for children/young people (UN Committee on the Rights of the Child 2008). This did not happen³².

The New Labour approach to ASB was in direct conflict with the WG's view of their use. The WG disagreed with the use of ASBOs (see also page 51) and sought to limit them. It was claimed a tiered-approach had been adopted by the four police forces in Wales (House of Commons Welsh Affairs Committee 2005a) and that Wales had chosen to minimise the use of ASBOs, in contrast to England, which did not. This raised the question of whether the difference of approach had resulted in any variance in use in England and in Wales. The period 1999 to 2009 has been examined as it is possible to disaggregate the figures for both countries. Use of ASBOs considerably increased from 2002 onwards, with peak usage between 2004 and 2005, during which time there was active encouragement from the UKG to impose these measures, rather than to find alternative solutions to nuisance behaviour (Nacro 2003; Solanki et al, 2006). Numbers started to decline from 2008 onwards. Overall,

³² ASBOs were abolished in 2014 and replaced with civil injunctions to prevent nuisance and annoyance and criminal behaviour orders.

England and Wales followed the same broad pattern as figure 7.1 illustrates.

Figure 7.1: Use of ASBOs on young people in England and in Wales between 1999 and 2009



Thirty-nine per cent of ASBOs were made on children/young people aged 10 to 17 years, which corresponded to over 7,000 children/young people in England and in Wales. This does not indicate sparing use. Greater Manchester made the greatest use of ASBOs, 13.5% (n=929) of those made in England and Dyfed Powys in Wales the lowest use, (12 between 2000 and 2009 - 3% of Welsh ASBOs³³ on young people). However, the figures also show that at its peak (in 2005), there was proportionately greater use of ASBOs in Wales (0.02% of the 10 to 17 year old population) than in England³⁴ (0.3% of the 10 to 17 year old population).

Breach rates were high: between 2000 and 2009 the average rate for young people was 67% in England and 68% in Wales (Anti-social Behaviour Order Statistics – England and Wales 2009). Further, in the same period 40% of young people who breached an ASBO received a custodial sentence (this equated to 1505 young people). There were wide variations in breach rates across England with Greater Manchester having one of the highest rates (75%) and South Yorkshire one of the lowest (35%). Breach rates in the four police force areas in Wales were also high: Dyfed Powys (75%), Gwent Police (70%), North Wales (66%) and South Wales (68%)³⁵.

³³ The total for Wales between 2000 and 2009 was 369 and for England 6879.

³⁴ This related to 88 young people in Wales and 1493 in England in 2005

³⁵ The ASBO imposed on 10 to 17 year olds in each of these areas was - Dyfed Powys Police (12 cases), and Gwent Police (86), North Wales Police (161) and South Wales Police (110).

These statistics are of interest as they show that Wales made proportionately higher use of ASBOs and had a higher rate of breach than England, despite the claim of minimal use. There have been various approaches to ASB, which accounted for variances in usage: some local authorities took a tiered approach, utilising a combination of issuing warnings and offering support to avert the need for an ASBO, whereas others made decisions on a case-by-case basis and did not use diversionary steps to the same extent (Solanki et al, 2006). Local authorities in Wales took either a three or four-stage approach and would only make an application for an ASBO as a last resort (Naco Cymru 2007, Hoffman and McDonald 2011). Barbara Wilding, when Chief Constable of South Wales Police, described this as a 'graduated problem solving approach', which had been adopted across Wales (Wilding 2008:6), however despite the claim of a national approach to limit use, the statistics indicate proportionately greater use of ASBO in Wales. It is possible those areas in England that made lesser use of ASBOs offset the significantly high use in a number of well publicised localities and this accounts for the difference between the two countries.

7.7 Targeted prevention services - findings from the fieldwork

The four YOTs had different approaches to targeted prevention and different target groups, which were linked to the way services had historically developed in each locality. Wales A had a YIP, but altered its approach to work solely with young people who had committed anti-social acts, rather than those that met the YIP criteria (page 100); the rationale being there was a clearer relationship between ASB and offending than broad ranging problematic behaviour, which may or may not result in law-breaking. The YOT used a risk assessment screening-tool to target young people to avoid net-widening, which fitted with its risk-focused approach:

We use the screening tool to determine those young people we should invest the most time and effort in. Some YOTs will involve everyone in their prevention and early intervention approach, to me that is net-widening and doing everything that we have been told by research that we should not do. We are seeking to narrow down the population to the right population to work with, we eliminate against a series of risk indicator factors around education, ASB, children's services involvement and the date of the first offence. It's the Scaled Approach applied to prevention and ASB (WAP11)

Wales B had a targeted prevention service that started as a YISP but broadened out into a wider Youth Intervention Service. This comprised two YISP workers from the YOT, members

of the 16+ leaving care team and other (youth) workers who worked with young people with welfare problems, described as a 'step down from children in need'. Cases were referred by a range of agencies and a 'local resource solution panel' would assess whether a prevention worker would be allocated. The local authority was described as having a collaborative culture which contributed to good working relations with the main agencies, cemented by the YOT manager sitting on several strategic groups. The YOT undertook other preventative activity that included offering voluntary support to young people who received police reprimands³⁶ and to those who had completed a statutory order, but needed on-going support. This fitted with the welfare culture of the team (see section 6.3.4), as young people who were considered to need extra support had that need assessed and were offered assistance. The YOT worked with some schools to develop restorative-approaches to prevent exclusions, particularly as exclusion could mean a young person having to travel over 30 miles to a new school, in another part of the county.

England A was located in the Youth Support and Development Service, with the Youth Service. The YOT had not had a YIP or YISP and pre-offending preventative work was undertaken by the Youth Service. The YOT described its preventative work as providing support to young people who were subject to final warnings (and had therefore committed a criminal act). Providing family support was part of the prevention strategy (although not always delivered by the YOT), as was working with schools, particularly around pupil behaviour management.

England B previously had a YIP until YJB funding ceased. The YIP mainly received referrals from schools and undertook one-to-one work with young people about the consequences of offending, addressed anger management and ran activities in school holidays. The current strategy of the local authority was to identify children 'at risk' and to work with their families through the UKG's Troubled Families Initiative. There were also plans to offer support to 'at risk' 10 to 14 year olds and to some young people in receipt of a Community Resolution (see next chapter). The YOT ethos was to engage with other services to avert offending as well as other poor outcomes:

It is about preventing lots of negative outcomes for kids in later life. The YOT should have a role to play but as part of a wider activity. You can't identify a young person at a certain age as just being at risk of offending, it is more likely that they will be at risk of all sorts of outcomes – teenage pregnancy, poor health, family breakdown and

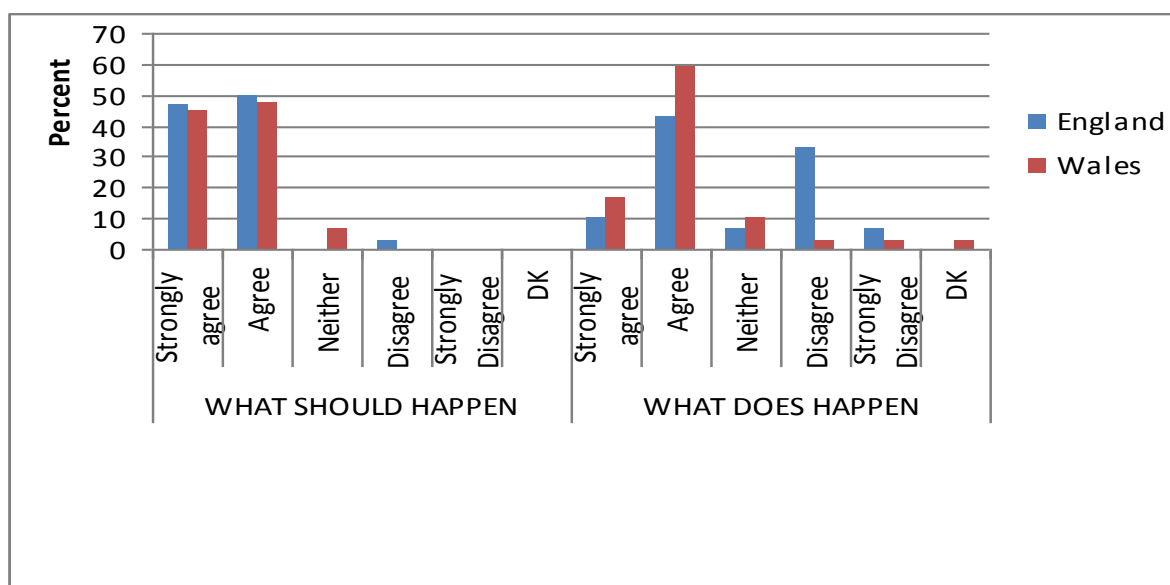
³⁶ Police reprimands and final warnings were replaced by youth cautions and conditional cautions in April 2013

poor attainment at school. All agencies need to work together to identify the problems and work together to resolve them (EBP1).

7.7.1 Targeted prevention and preventing criminalisation

Practitioners in England (94%) and in Wales (93%) were in agreement that targeted prevention should be part of a strategy to stop young people entering the criminal justice system, as should intervening early in emergent criminal careers (see figure 7.2).

Figure 7.2: Practitioners' views of whether targeted prevention and early intervention prevents criminalisation



However, more practitioners in Wales (79%) thought targeted prevention and early intervention happened in practice than practitioners in England (50%). The lower response from England was because respondents were more inclined to say prevention lacked resources and a long-term strategy, which may be a reflection of the cuts to services that had been experienced in recent years (Carol Goldstone Associates 2010), as well as lack of dedicated provision.

Conversely, Welsh YOTs thought targeted prevention worked well and was effective. The experience of the YOTs in delivering prevention services influenced responses as the manager and practitioners in Wales B (where there was a well-established service) were advocates of it, as they believed the YOT as a specialist service, should deal with prospective as well as proven offending behaviour:

Prevention should come from an agency that understands what the prevention of offending is about and knows what to do and it should therefore stay with the YOT (WBP12)

Alternatively, practitioners in England A (where there was no dedicated provision) had a wider range of opinions about whether the YOT, Children's Services, schools or the Youth Service should be the lead agency, but also recognised the YOT was sometimes forced to take the lead because other services were not fulfilling their responsibilities:

I don't think the YOT should be the lead agency but we have a role to play – perhaps in talking to schools. It is a welfare activity and Children's Services should be taking responsibility, perhaps with the police when there is ASB (EAP4).

UKG and WG policy placed YOTs centre-stage in targeted preventative work until 2010, but the definition of what it should constitute varied and there have been recommendations that governments should be clear about their policy intent (Cardiff University et al, 2009). In this analysis practitioners thought the YOT should only be involved if an anti-social act or an offence had been committed, in which case there was a clear justification (this applied in both countries):

If you were going to be really clear about what the role of the youth justice system is then the YOT should only be working with young people who are offending, because otherwise how do you know whether they are just children with problems that you may draw into a criminal and risk focused arena (EAP2).

This is best illustrated by Wales A that re-orientated its prevention activity from a 'generic' service to one that specifically targeted ASB. YOTs also provided early intervention to those at the lower end of the offending scale, where there was proven evidence of offending. For example, England B planned to screen all 10 to 16 year olds who received a first caution for problems with social care, domestic abuse, poor attendance at school/exclusion and ASB, which are all factors that some localities would have tackled through targeted prevention services.

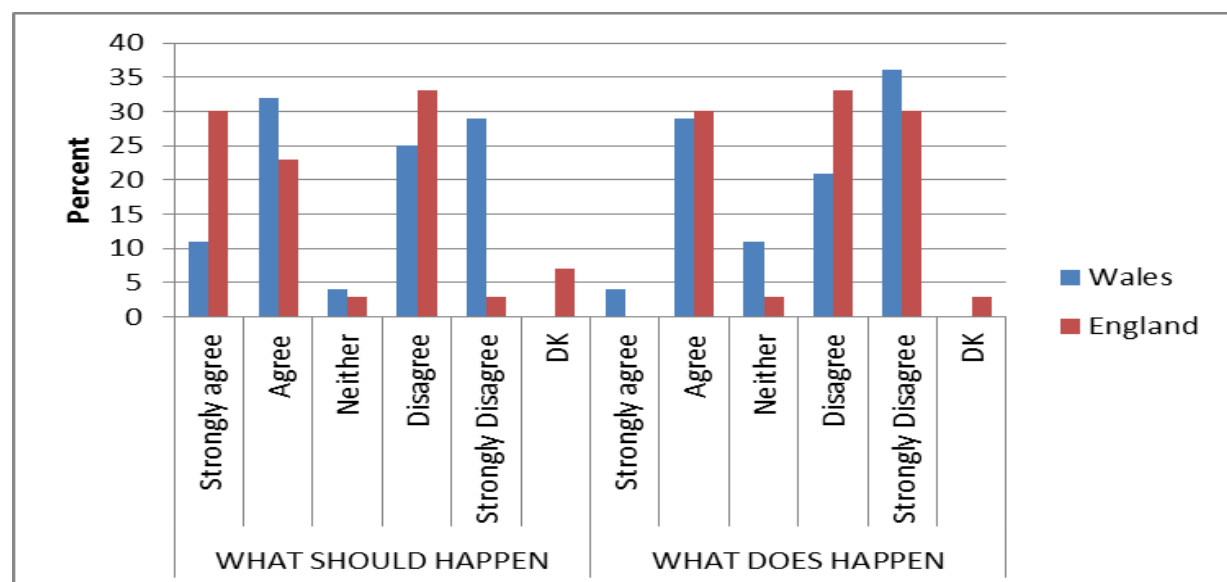
The analysis indicates that practitioners in England and in Wales believed young people should be prevented from entering the youth justice system in the first place, so the notion of 'prevention being better than cure' which is embodied in the *AWYOS*, applied as a principle in England as well as in Wales. Where there was difference of opinion, it was in how this

should be achieved. In Wales practitioners were more inclined towards targeted prevention, whereas in England, preventative activity was more closely aligned to providing voluntary support to those subject to pre-court diversion.

7.7.2 The role of Children's Services in prevention

One of the most important organisations YOTs liaise with is Children's Services. This is because they gate-keep services for children in need (CIN), provide support to children 'looked after by the local authority', have statutory responsibilities to provide accommodation and to safeguard and protect children/young people. It has been suggested that when the 'new' youth justice system was formed, it created an artificial division between responses to welfare needs and justice (Smith 2005), with one of the points of contestation being what role Children's Services should play in preventing delinquency. Practitioners were asked whether or not Children's Services should be the lead agency in this respect. Figure 7.3 indicates there was a wide range of views about this and no definitive answer.

Figure 7.3 Practitioners' views about whether Children's Services should be the lead agency working with those at risk of offending



It might have been anticipated that practitioners in Wales would have been more inclined towards Children's Services, as a 'children first' approach would place targeted prevention (for pre-offenders) outside of the criminal justice system, but opinions were as mixed in Wales as they were in England about where responsibilities should lie. There was a general concern that if Children's Services were given overall responsibility for 'at risk of offending' prevention, that it would simply not happen, even though it is where some respondents believed it should be located. Smith (2005) suggested the AWYOS may have had the

intention of incorporating youth justice within Children's Services in Wales (which did not occur), to ensure that young people's welfare was promoted to prevent offending. However this analysis suggests the aspiration is not one that is necessarily shared by practitioners in Wales (nor in England), as Children's Services were regarded as over-stretched and thinly-resourced: a referral to them would not always guarantee a service. For some, it was a question of clarity about what each service should provide:

I am not a social worker, but from the justice side of things. My role is to prevent further offending and if there are massive welfare needs I am not the one to address them, that is up to Children's Services (WBP13)

7.7.3 Other preventative activity

There were differences of opinion between the YOTs about what type of prevention activity they should be involved in, for example whether school-related behavioural problems should fall within the YOT remit or not. This was not an England versus Wales matter, but one of individual preference. For example the YOT manager in Wales A indicated that school management problems should be dealt with by the school, whereas the other three YOTs engaged with this work. The national focus of YIPs had been to promote re-engagement with education and learning (Mackie et al, 2008), which continues to feature in preventative work, although there is also an emphasis on using restorative-approaches to avoid exclusions or the criminalisation of children for ASB in school.

A further area of interest is the role of the Youth Service in undertaking preventative work in Wales B and England A. However, the YOT managers (in both localities) had concerns about whether it would deliver a prevention service in the same way as the YOT, and be as effective. These viewpoints arose from the YOT and the Youth Service having different work-based cultures. The YOT managers wanted to ensure that preventative work would follow the same model as statutory work e.g. be assessment-led and deliver related interventions, suggesting they wanted to see a more structured approach in what has traditionally been an informal service:

A lot of people are naturally gifted in working with young people, but it is also a question of focus and direction. You need a proper assessment and a focused plan to be consistent (EAP7).

All of the YOTs talked about the importance of early intervention with families, of working to improve family relations and helping them to function better. However, they did not

necessarily consider it was their role to deliver this, as YOTs are essentially a child rather than family-centred service. Some believed it to be a local authority responsibility, or that it should be provided by an agency with the relevant expertise. In the ranking exercise (chapter six) only Wales A placed any significant emphasis on undertaking family work and this was in relation to parenting.

7.7.4 The effectiveness of prevention as a service

Policy-makers have pursued prevention as a major initiative despite the difficulty in proving its efficacy. Wales B was far more convinced of the effectiveness of prevention than any of the other YOTs; with 69% of respondents³⁷ indicating it had a significant impact in stopping future offending (and in reducing the numbers of entrants to the youth justice system). The YOT considered prevention to be effective if young people they had worked with had not progressed to a statutory order:

I think that prevention has had a massive impact. Very few of the prevention cases come through on the statutory side. It is a proactive service; we try and identify young people in trouble, whereas with final warnings and cautions you are waiting for them to come to you (WBP4)

Practitioners in England B made similar observations:

Our YIP did show direct evidence of improved outcomes. When the project first started it looked at young people with a high incidence of ASB that services were generally concerned about. Our work helped them and they disappeared off the radar. Another cohort has not come through (EBP12).

Other practitioners (in the same and in different teams) were less convinced:

I don't think its prevention, because there were always young people that were not going to offend. They have their problems but they are just getting on with it and are never going to be a big problem to themselves or others (WAP10).

Practitioners' views were influenced by their experience of the service or the interventions they delivered. It is possible that if prevention was an integral part of what they did, they were reluctant to question its value or impact. It is also likely that preventative work would

³⁷ This was assessed from the semi-structured interviews and compares to 18% in Wales B, 7% in England B and 0% in England A.

have had an effect on some young people, which this research has not attempted to quantify. Another possibility is that as prevention has been such a big part of the youth justice landscape for so long, practitioners did not question whether it worked or not and just assumed that it did:

With diversion young people have a greater chance of getting on with their lives. I firmly believe in this and less so in prevention. Practitioners tend to think its prevention but I am less convinced, but you have to remember it is all they know (WAP7).

The preceding analysis demonstrates there are various models, approaches and interpretations of what (targeted) prevention comprises, how far the remit of the YOT should extend and what the role of Children's Services and other agencies should be, which accords with findings from other literature (see for example the Criminal Justice Joint Inspection 2010). This indicates the position in England and in Wales is not clearly demarcated despite the 'children first' philosophy in Wales, which would suggest that pre-offending prevention should be undertaken outside of the criminal justice system, rather than by a criminal justice agency. It is apparent that what is delivered depends on historical developments in each locality, the vision the YOT manager has for their service and the availability of funding to deliver relevant functions. Prevention also means different things in different places, with Wales B operating a service closest to the YIP model, whilst England A only offered early intervention when proven offending had occurred. Wales has retained the legacy of the YIP/YISP-led approach more so than the English YOTs, although discussion with the Welsh YOT managers confirmed that activities were not 100 percent funded by the WG, so this was a matter of local choice or because of alignment to other local authority priorities (e.g. community safety). However there was common ground as practitioners in both countries recognised the importance of advancing the best interests of children by preventing criminality, albeit in different ways.

7.7.5 Addressing needs and linking to other services

A further area of discussion is how far the YOT should be involved in the delivery of welfare-based interventions. This is relevant because the UKGs vision of a YOT was a service in which the role of the youth justice worker was to:

Deliver community intervention programmes to make youngsters face up to the consequences of their crimes and learn and change the habits and attitudes which will lead them into offending and anti-social behaviour (Home Office 1997:28).

It is also relevant because the philosophy of the AWYOS is to promote the welfare of children/young people in criminal justice responses. Practitioners did not think there was a clear-cut separation between dealing with young people's needs and their offending behaviour; both were inter-linked and providing a holistic service meant addressing both sets of issues. The culture of a 'children first', welfare-based approach has been identified in other studies of Welsh YOTs (Cross et al, 2003; Field 2007), but a concern for welfare needs was also apparent in YOTs in England (Burnett and Appleton 2004; Boden and Ellis 2005) and still evident in the more mature youth justice system (Briggs 2013). In this study, there did not appear to be any more of a belief that youth justice should be more welfare-orientated in Wales (because of 'children first') than in England. In Wales ensuring that welfare services were engaged with young people would be described as ensuring entitlements were provided (and *Extending Entitlement* delivered). This was sometimes the language used by practitioners interviewed in Wales, but the views of practitioners in England did not indicate they thought any differently:

We are not a welfare agency – we are part of the criminal justice system and need to work in a multi-agency way. If other services don't respond it can make us totally ineffective (EAP2)

The structure of the current youth justice system means there is a reliance on universal services to support the objectives of preventing offending and to deliver the welfare interventions, by (re)integrating young people into mainstream provision or in providing specialist support. All YOTs drew attention to their role in identifying needs and in making referrals to appropriate services:

When we identify welfare needs on assessment, we may find a young person who had lots of welfare needs that have not been brought to anyone's attention or if they have been their case has been closed. When we pick them up, we need to refer them. It is always about helping young people to get the services they need (WAP2).

Practitioners in England and in Wales regarded the role of specialist agencies in the team and the part universal services should play in addressing needs and preventing offending as necessary to the functioning of the YOT. The pathways into services were described as 'many and varied' and some were more difficult than others to identify and negotiate. Specialist workers were described by one YOT manager as 'outreach workers' from their parent agency, who made that service easier to access:

These workers give us much more communication with these agencies, having workers in the YOT helps us to know who to go to, what information is relevant and not and how to challenge if we are not making progress (EBP6).

CAMHS in particular was described as an 'impenetrable fortress', which health professionals were far more effective in gaining access to, than non-health professionals. The loss of specialist provision in the team could have a significant effect on access to services or whether they were delivered at all, thus undermining what the YOT was trying to achieve. England A had lost an education welfare officer and Connexions worker due to financial cut-backs:

We had a really effective service, then we lost resources. Now we don't always know who we should be dealing with, our job has become harder and it is more difficult to deliver a good service (EAP14).

There was significant commentary about accessing Children's Services. Practitioners in England and in Wales encountered two main problems in their engagement; age and service-entry thresholds³⁸. Younger children were prioritised over older teenagers (because of child protection and safeguarding concerns), which meant that 16 and 17 year olds might not be offered a service despite their vulnerabilities. It was not uncommon to be told 'they are old enough' or 'it is too late' and to be refused an assessment of need or support:

If you have to prioritise work, a family with younger children is always going to take priority over teenagers, who some social workers feel have created their own problems and therefore deserve a less sympathetic input (WAP6).

The thresholds for CIN were high and access could be problematic if there was already statutory input from the YOT, as social workers would question the need for their involvement even though the criteria of CIN were well defined:

Children's Services pulled out when I became involved. His order was for six months and in the period he turned 16. I have been aware of threats and problems in the family home. Had there been a social worker it would have been followed through. We have to withdraw on the last day of the order, have no remit to carry on and are limited in what we can do (EAP11).

³⁸ Similar comments were made about access to CAMHS

If a service was denied it could present huge dilemmas in terms of what the YOT should do for the young person:

I have had recent problems with a young person I have been trying to refer in on several occasions, who is not thriving on any outcomes. He is nearly 16 and has moved from mum to live with his sister. He is NEET³⁹ and his physical health is not good – he is a child in need. Children’s Services won’t pick him up. He is in breach of his order because he won’t reply [to us]. Children’s Services feel the agencies that should be involved are, so will not add any extra services, which has left me in a stalemate position as I cannot move his case forward. It is giving me a problem with his beach report because I do not know what to recommend. He is on a referral order and I could up-tariff him to a youth rehabilitation order, but that is not going to help him (EBP2).

The separation of generic social work from offending-related social work was regarded by some as the fundamental problem, as social workers based in YOTs had to make referrals to what was in effect a separate service:

There are already all these agencies working with YP out there and the gap tends to be because youth justice used to be social work based, so if there were problems with vulnerability, or young people were considered to be at risk, the work would be done as part of the service (EAP2)

What also materialised from the descriptions provided by practitioners (whether in England or in Wales) was that they regarded there to be two distinct services: one that dealt with vulnerable younger children (Children’s Services) and the other that worked with older troubled teenagers (the YOT). The extent to which the formation of YOTs have contributed to this is moot, or whether progressive financial cuts have led to retrenchment in Children’s Services, but the position appeared to be similar in England and in Wales, with YOTs regarding themselves as a specialist adolescent service, often filling a gap that was not being addressed by social care:

If we take the position of children first and that we have the skills and experience of working with adolescents in trouble, then we should be working as an adolescent team and also taking referrals from Children’s Services in this respect (WAP6)

³⁹ Not in education, training or employment

7.7.6 The role of the practitioner as a broker/advocate

Practitioners in England and in Wales saw their roles not just as agents that delivered offending-related interventions, but as brokers of services for young people and advocates to ensure any barriers to access were addressed and overcome. The youth justice system has matured since it was established in 2000 and successive policies have made changes to pre-court diversion, the processing of young people through courts, amending community sentences and using restorative justice (H M Government 2008 and MoJ 2011). The importance and necessity of engaging with mainstream services has not received the same attention. By contrast the WG has consistently stressed its importance. The possible exception to this is resettlement from custody where accessing accommodation, education, training and employment are regarded as necessary to ensure community re-integration (Hazel et al, 2012). In this study, practitioners viewed multi-agency working as fundamental to what they did, and advocacy and brokerage as core functions:

Practitioners see themselves as advocate/brokers because of the offending tag. No-one else would be doing this if the YOT practitioner was not, particularly for teenagers who have offended, as that makes them a different animal (WBP6)

Those interviewed (irrespective of whether in England or in Wales), undertook this role because of how other services could react to children in trouble with the law and the 'barriers' that sometimes had to be overcome. For example, one of the YOTs had experienced colleges screening young people out of their courses when a criminal record came to light and a well-known national youth organisation would only allow two young people from the YOT to attend their service at any one time. A common refrain was the challenge of getting external services to accept they could play a part in youth crime prevention, as they did not necessarily view the need for social integration in the same way as the YOT and could respond by either regarding young people as 'too risky' to provide a service to, or had difficult service-entry thresholds to negotiate:

Its thresholds everywhere – we don't get to dictate ours. We can assist with certain things; with education through a mixture of coercion and co-operation - not ideal, but we have no power to make anyone house a young person appropriately. Housing services are an impenetrable bureaucracy to a young person. They don't cater for young people and misunderstand what it's like to be one (EBP3).

Some agencies would give young people a limited number of opportunities to engage and withdrew their services if their appointments were not attended (notably CAMHS). YOT

practitioners saw their role as promoting engagement when failures occurred and considered other agencies were more likely to stay involved if the YOT was facilitating this. In effect YOTs undertook a dual role, that of trying to engage the young person and of trying to engage the service:

We come across a lot of vulnerable young people. We are often the only ones keeping a real eye on them. They have been left to drift and if they did not have a YOT worker to keep pushing other services and reminding them they have duties they will fall below everyone's radar and can very quickly become undeserving by housing or social care if they are not towing the line. Agencies will then say they are not engaging. They don't seem to consider why the service is not accessible, why they aren't engaging and what can be done differently. It seems to me that when you are dealing with children and young people that this is what you should be doing (EBP1).

Practitioners also advised agencies to have realistic expectations of what young people who led chaotic lifestyles could cope with and attempted to promote a better understanding of their needs. Although YOTs took a 'children first' approach, the agencies they were dealing with often did not and this could be problematic when trying to prevent offending:

It is about educating other agencies about the needs of this age group and challenging their views and questioning why they are making the decisions they are. I was trying to explain to tenancy support yesterday that if this young person loses his tenancy, then all his risks will increase and then we need to be worried as his offending might increase too (EBP2).

In conclusion, practitioners raised the same issues and concerns (whether they were in England or Wales) and broadly defined the broker/advocate function in the same way; negotiating access to services, offering additional support to help young people to engage with other services, highlighting the needs of those in the justice system and at times challenging the decisions of agencies. This suggests the YOTs (in both countries) acted in a similar way and by necessity became advocates/brokers to ensure welfare needs were addressed, without directly undertaking that work themselves. However, it also emphasises that the delivery of 'children first' services in Wales cannot simply be an objective for the youth justice system and has to universally apply to all mainstream agencies and be understood by them.

Chapter Eight

Pre-court Diversion

8.1 Introduction

Both the UKG and the WG have the over-arching aims of preventing young people offending and reducing the number of first time entrants (FTE) to the youth justice system. A FTE is defined as a young person who has received a police reprimand, final warning or a first criminal conviction (MoJ 2010b). The chapter explores the development of pre-court diversion and its impact on the youth justice system in England and Wales in reducing the numbers of FTEs. It also examines the views and attitudes of the four YOTs in the study towards diversion and what practitioners feel has impacted on practice in recent years.

8.2 Pre-court diversion

Between April 2000 and April 2013 the system of reprimands and final warnings operated across England and Wales. It was intended to limit the number of pre-court disposals issued by the police, to promote more unified decision-making and to provide a 'fast and more effective' response to early offending (YJB 2001:6). The approach was non-discretionary and the initial presumption was to intervene in the majority (80%) of final warning cases, rather than to divert and decriminalise (Bateman 2003). This target was later amended and eventually dropped. Although one of the objectives was to promote more consistent practice, rates of diversion continued to vary regionally, nationally and between England and Wales (MoJ 2010b) (see figure 8.3).

The pre-court landscape has changed considerably since 2008 when greater emphasis was placed on increasing police discretion to deal with low-level offending. Smith (2014) suggests that pre-court diversion activity can be divided into national initiatives such as Triage (started by the YJB in 2008) and the Youth Justice and Liaison and Diversion schemes (by the Department for Health in England in 2008), and local initiatives, such as the Swansea Bureau. Further, the YJB, in conjunction with the Association of Chief Police Officers introduced the 'on-street' Youth Restorative Disposal for minor offences (Ashford 2007:19), now known as a Community Resolution (CR). These disposals were initially piloted by North Wales Police and seven police force areas in England. Reprimands and final warnings were replaced with youth cautions and conditional cautions in April 2013. This is a more flexible system that allowed the scope for pre-court disposals to be used (repeatedly) even where there had been a previous pre-court disposal or conviction.

8.3 The first time entrant target

The YJB's initial target for youth crime prevention was to (YJB 2005b:6):

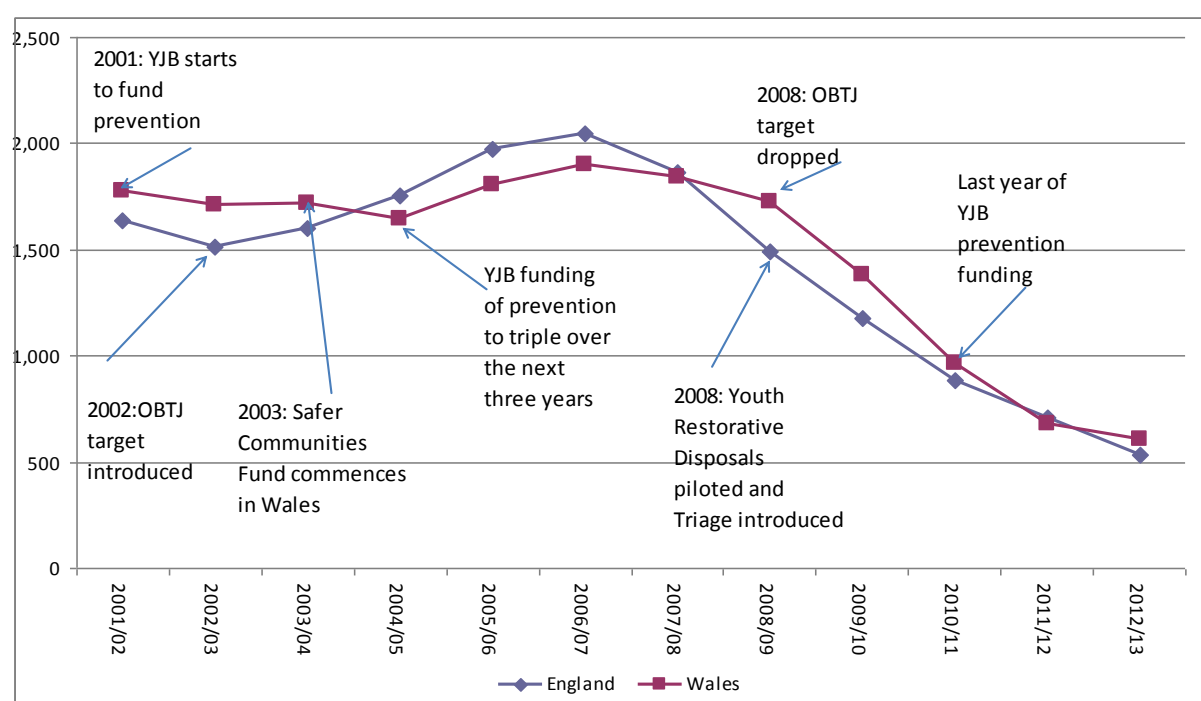
Prevent offending by children and young people by ensuring YOTs have in place evidence-based prevention programmes such as YISPs [and YIPs] that reduce the likelihood of young people targeted by the programmes committing offences and anti-social behaviour, as measured by arrest rates.

In 2005 the definition of a FTE was adopted (described at the start of this chapter). It is likely this change occurred because it had become apparent that measuring arrest rates alone did not determine the impact on FTEs (as the previous chapter identified). The YJB initially set a target of reducing FTEs by 5% by 2008, against a baseline of 63,749 young people who had entered the criminal justice system between April and December 2005 (YJB 2006). The FTE measure was intended to quantify the numbers of entrants to the youth justice system as a whole, whereas the YIP targets were locality based, although expected to impact on the entire system. YIP targets remained in place until 2006.

The FTE targets were for YOTs, even though the decision of whether to charge and/or convict is that of the police and not the YOT, (although Triage and Bureau introduced a degree of collaborative decision-making). The prevention and FTE targets ran in parallel and in tension to a UKG targeting for policing, the 'offences brought to justice' (OBTJ) initiative. This required the police to increase the amount of detected crime (a sanction detection), which included police reprimands and final warnings, by 225,000 between 2002 and 2008 (Nacro 2009). The OBTJ target ended in 2010, having been revised in 2008, to solely focus on serious crime. Whilst in place it led to a considerable rise in the use of formal sanctions against young people, who were disproportionately represented in the number of detections. The detection targets significantly increased the numbers of FTEs and the amount of lower-level offences that were prosecuted (Bateman 2013a). The CR was ultimately introduced to combat the over-representation of young people in the OBTJ initiative and as a means of dealing with low-level offending. However, this may not have been for entirely altruistic reasons as it was also an 'alternative to doing nothing', put in place to 'reduce the amount of time that police officers spend completing paperwork', and to lessen the burden on the courts by reducing the number of cases processed through them (CRG Research Ltd 2011: 5 and 7).

Figure 8.1 is derived from an analysis of YJB data for FTEs between 2001/2 and 2012/13. The chart maps some of the key prevention and pre-court initiatives in England and in Wales and accompanying sources of funding. Its limitation is that it only focuses on the main UKG and WG funding streams for targeted youth crime prevention and not others that might have been influential. For example, the Education Action Zone, the European Social Fund and the Children's Fund all funded activity in England in the period (Morgan Harris Burrows 2003), as did the police and local authorities in Wales (Cardiff et al, 2009a).

Figure 8.1 Rates of young people aged 10-17 receiving their first reprimand, warning or conviction per 100,000 10-17 year olds in the population, in England and Wales, 2001/02 - 2012/13



The chart shows the ratio of FTEs in Wales, relative to the population of 10 to 17 year olds, compared to England. It demonstrates the extent to which, despite the FTE target being in place for most of the lifetime of the OBTJ target and YOT-led prevention, that FTEs significantly increased, rather than decreased. In terms of differences:

- Wales started at a higher level of FTEs than England;
- The rise in FTEs was more dramatic in England even when the levels were increasing in both countries; and
- The OBTJ target seems to have had more of an immediate impact in England, than in Wales.

Overall the pattern is similar in both countries, with reductions in FTEs in England and in Wales occurring at broadly the same time. From 2006/7 the numbers reduced by 24.9% in England and 28.9% in Wales, and accelerated from 2008/9 onwards (reducing by roughly a further third by 2012/13 - 34.2% in England and 33.1% in Wales). In 2012/13 the rate of FTEs per 100,000 in the (10 to 17 years) population stood at 533 in England and 609 in Wales, with England having a lower rate of diversion, for the first time than Wales, since 2007/8. In numerical terms the fall in FTEs has been equally impressive, with the overall reductions in England and in Wales being 69% apiece since 2001/2 when figures were first available.

YJB regional statistics for 2011/12 have been analysed to identify if there are any differences between England and Wales in detected levels of crime⁴⁰. Figure 8.2 shows the prevalence of detected crime is lower in Wales than in England. It could suggest that proportionately fewer Welsh young people come to the attention of the formal youth justice system compared with those in England (because Wales had a stronger focus on de-criminalisation, as a result of the 'children first' ethos), however as the ratio of FTEs per head of 10 to 17 population in both countries is not dissimilar, (as is the overall rate of fall in the numbers of FTEs), it is not possible to conclude from this that crime prevention and other diversionary measures have been more effective in Wales than in England. However, it is possible that the big cities in England may account for the difference between the countries.

Figure 8.2 Prevalence of detected crime England and Wales in 2011-12

	Substantive Youth Justice Disposals	10 to 17 year old population⁴¹	Ratio of disposals to population
England	66,768	5,021,870	1.3
Wales	3,367	290,134	1.1

It therefore seems likely that FTE reductions are a consequence of diversion from formal sanctions, once proven offending had occurred, rather than as a result of preventative activity, which measured arrest rates and not arrest outcomes. Further, as the police are the gatekeepers of the youth justice system their actions are likely to have a greater direct impact on FTEs than indeterminate prevention activity undertaken by a broad range of agencies. In 2006/7 FTEs were at their peak and the OBTJ target was firmly in place, so the

⁴⁰ This has been taken for 2011/12 as Cardiff did not supply any regional data on numbers of disposals for 2012/13

⁴¹ The population is from the mid-2011 (census) estimates (Gateway to the YJS table 1.3)

incentive not to criminalise young people even for low-level, minor offending was simply not there. There was also considerable annual expenditure on preventative activity; around £4.3 million per annum from the WG (Cardiff et al, 2009a) and £31.45million from the UKG in 2010 (YJB 2010a). Although the YIP evaluations identified some positive local effects (Morgan Harris Burrows 2003; Mackie et al, 2008), the impact was not significant enough to reduce the overall level of FTEs across England and Wales, in fact the converse was the case for a number of years (see figure 8.1).

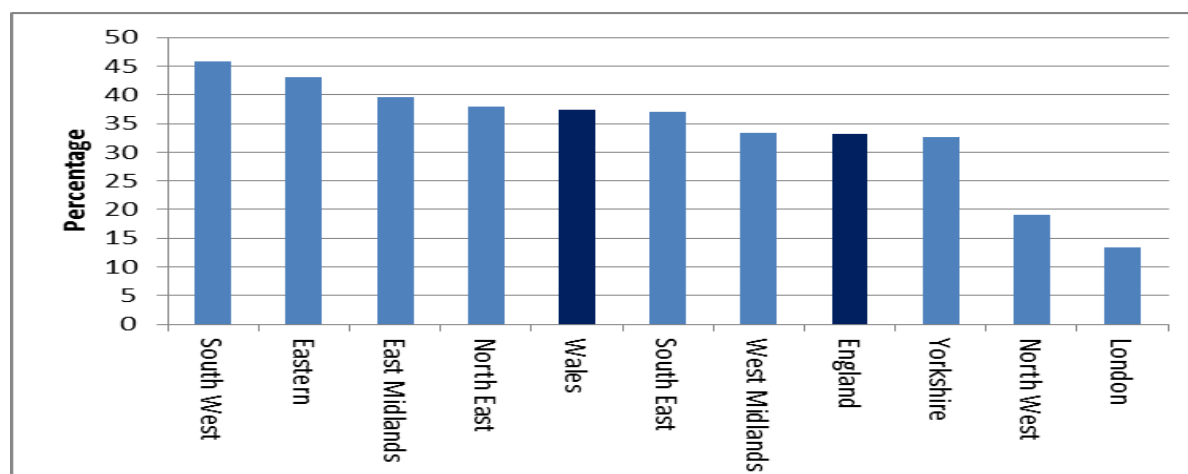
There has been a discernible shift in the way the YJB has viewed targeted prevention and the fall in FTEs, that indicated it may have changed its views about what has had the most impact. In 2008, the YJB stated that it was seeking to reduce the number of FTEs through its targeted prevention programmes by 'managing a £108 million programme of local youth crime prevention schemes' over the following three-year period (YJB 2008c). However, by 2013, it was acknowledged that FTE reductions 'are likely to be related, at least in part to the replacement in April 2008 of a government target to reduce the number of offences brought to justice' (YJB 2013b:5). The WG has continued to support targeted prevention but also included pre-court diversion into the Youth Crime Prevention Fund's criteria in alignment with UKG policy (see section 7.4).

8.4 The impact of pre-court diversion

Pre-court diversion has been examined to gain a better understanding of any differences between England and Wales. There is variation in the ratio of out of court disposals to convictions across police force areas in both countries, as figure 8.3 illustrates⁴². In 2011/12 the percentage of pre-court disposals in England as a proportion of all disposals was 33.1% compared to 37.4% in Wales. The table is derived from YJB regional disposals tables for that year. The next section analyses the impact of pre-court diversion in both countries.

⁴² The data has been taken from 2011/12 because of missing data from Cardiff and Sefton YOTs in 2012/13.

Figure 8.3: Percentage of pre-court disposals as a proportion of total disposals by region in England and in Wales in 2011-12



8.4.1 Triage

Triage schemes were introduced in 2008 and mainly operated in police custody suites. They aimed to increase collaborative decision-making between the police and the YOT, to divert young people who had committed low-level offences (who admitted guilt) from formal sanctions, to provide voluntary support to address identified needs and to increase the use of restorative interventions (Institute for Criminal Police Research 2012). It has been suggested that those areas that received *Youth Crime Action Plan* funding for Triage experienced greater falls in FTEs than those areas that did not (National Audit Office 2010) and also employed ‘alternative means of resolving cases’ (House of Commons Justice Committee 2013:8) such as CRs or some other form of arrest-diversion. Given there were proportionately more Triage areas in England than in Wales, it might have been anticipated there were greater decreases in FTEs in England⁴³. This was because there were more opportunities for diversion, and because those areas that had Triage, performed well relative to those areas that did not. However, figure 8.1 does not indicate this was the case. The national evaluation of Triage identified that although there were different models that worked to the same broad aims, it was unable to report on their effectiveness because of insufficient data (Institute for Criminal Policy Research 2012). However, where local information is available, it indicates some positive effects.

The evaluation of Cardiff YOT’s Triage⁴⁴ showed there was a 65% drop in the number of FTEs, following its introduction between September 2009 and March 2012. Further,

⁴³ There were estimated to be 55 Triage schemes and if it is assumed there was one in Wales (Cardiff) and the remainder in England, this would suggest coverage in 35% of English YOTs.

⁴⁴ Although also covering the Vale of Glamorgan, the Vale was not included in the evaluation as it operates a different model.

children/young people who had been 'Triaged' were less likely to offend, when followed up at three, six and nine month intervals after their involvement, suggesting there may have been longer term impacts on behaviour (Moore et al, 2010). It has been suggested that 'natural desistence' can contribute to youth crime reduction, as some young people discontinue offending after a relatively short-lived criminal career, because of contact with the police (Morgan Harris Burrows 2003), which may explain the effect. The evaluators recognised re-offending rates needed more robust analysis and did not examine whether there had been any other changes to police practices during the evaluation period. The Cardiff evidence appears to indicate that Triage can have a diversionary impact. The ratio of pre-court disposals to other disposals also fell during the period from 38.1% in 2008/9 to 13.5% in 2011/12. This is of interest as the YIP evaluations showed a less consistent picture, with increases and decreases in arrest rates, which could not be explained, beyond possible changes in policing practices, which in all probability related to the OBTJ target. In contrast, Triage had a wider impact, as it operated across Cardiff as a whole, whereas the YIPs were based in two locations in the east (Llanrumney) and west (Ely) of the city.

Other local evaluations or analyses of Triage have also demonstrated reductions in FTEs, for example Hull Triage reported a 52% reduction in FTEs, between 2009 and 2012 (O'Connell 2012). Further, it has been possible to establish, from data from the Metropolitan Police Service (MPS) through a number of Freedom of Information requests (available on its website), that all 32 London boroughs had Triage for first time and low-level offenders. This showed that 65% of referrals to YOTs in London resulted in Triage (MPS 2014), but not the outcome of these referrals. Although information is not available about the methods of operation and effectiveness of each Triage scheme, the percentage use of pre-court disposals (as a proportion of total disposals), was lowest in the London area (13.4%) than elsewhere in England and Wales, in 2011/12.

Figure 8.4 compares the position in London (between 2007/8 and 2011/12) with that of the South-West of England, which had the highest use of pre-court disposals in England and Wales (45.9%). It is possible that the fall in formal diversion rates in London is a consequence of Triage and increased use of non-criminal disposals. An alternative explanation could be that the Metropolitan Police are more likely to prosecute and to use pre-court diversion less. A further consideration might be that whilst the 32 London YOTs deal with one police service, there are five across the South-West (Avon and Somerset, Devon and Cornwall, Dorset, Gloucestershire and Wiltshire), which means greater scope for differential policing.

Figure 8.4 Comparison of pre-court disposals as a proportion of total disposals in urban and rural localities in England between 2007/8 and 2011/12

Area	2007/8	2011/12
Inner and Outer London area: selected YOTs	<p>London average: 29.3%</p> <p>Inner London: from Lambeth 21% to Camden 36.3%.</p> <p>Outer London: from Brent 17.7% to Sutton 43.1%.</p>	<p>London average: 13.4%</p> <p>Inner London: from Lambeth 1.6% to Camden 7.6%.</p> <p>Outer London: from Brent 0.78% to Sutton 34.5%.</p>
South West of England: selected rural YOTs	<p>South West average: 50.5%</p> <p>Cornwall 46.3%, Devon 54.2%, Dorset 57.3%, Gloucestershire 60.1%, Somerset 52.0% and Wiltshire 50.5%.</p>	<p>South West average: 45.9%</p> <p>Cornwall 55.3%, Devon 46.1%, Dorset 44.2%, Gloucestershire 51.2%, Somerset 52.8% and Wiltshire 49.3%.</p>

Without knowing all the areas in England which had Triage and whether they operated effectively⁴⁵, it is not possible to establish whether it was a major contributory factor in reductions in FTEs in England, although the analysis here, suggests it is likely. There is no centrally published information (to my knowledge) about police force areas that deployed CRs, but the increased use of informal action and the likelihood that similar activities with the same common goals (such as Triage and CR), being used at the same time reduced FTEs.

A further influence on pre-court diversion can be linked to police force strength. This has diminished by 10% since 2010, with police officer numbers being at their lowest since 2002 (Home Office 2013). Reduced police numbers could have had a deflationary impact on detected crime and a less visible police/police community support officer presence may have reduced the capacity to detect and to solve crime. Further, if given the option of processing a low-level offence (with a diminished workforce) via a street disposal compared to the time needed to process a reprimand: estimated to be 11 hours (CRG Research Ltd 2011), police decision-making may not just be influenced by use of discretion, but by some basic practicalities as well.

8.4.2 Wales and the Bureau

The picture in Wales is different to that of England as there was only one Triage scheme – in Cardiff (which also includes the Vale of Glamorgan)⁴⁶. However, one of the differences between the countries is that Swansea YOT developed its own model of pre-court diversion. This practitioner-led development was established in 2009 and was used to determine

⁴⁵ This information does not appear to be published or if it was, is not currently available.

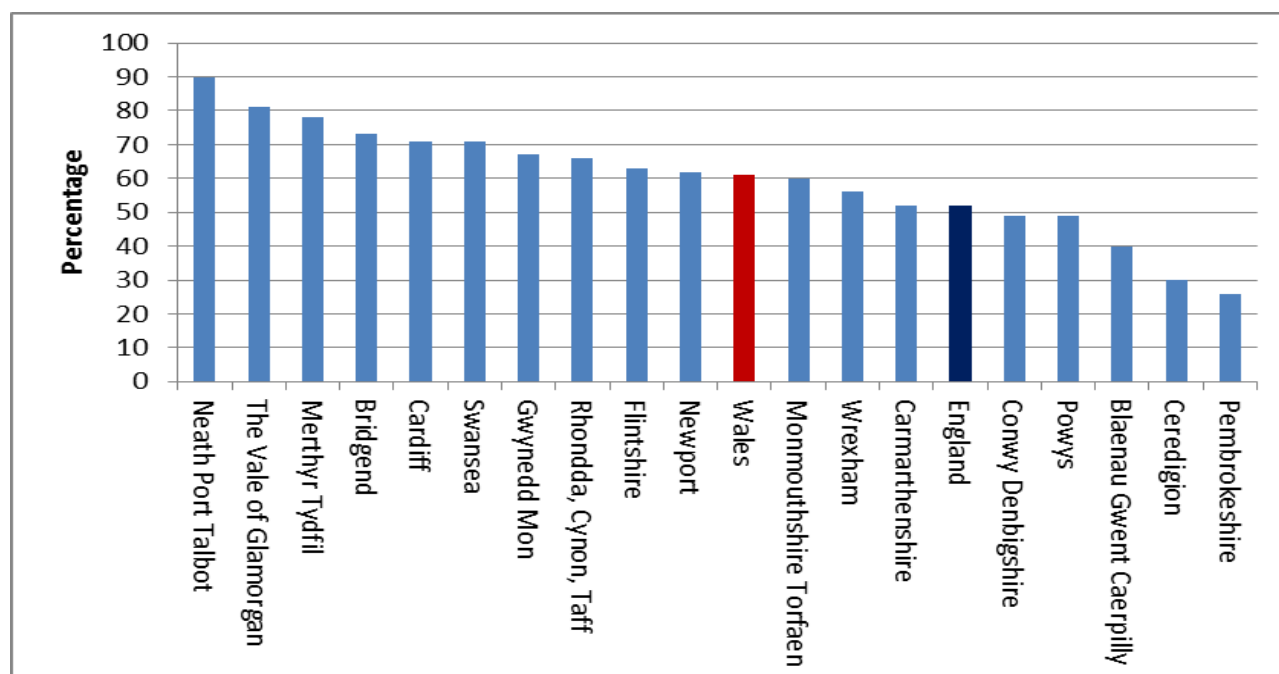
⁴⁶ A scheme in Newport failed to become properly established.

whether a formal sanction or a non-criminal disposal would be administered for low-level and first-time offending (Haines et al, 2013). The Bureau involved joint decision-making with the police, sought to divert low-level offenders from the formal system and was available for first-time entrants, who admitted guilt (thereby having some similarities with Triage). Voluntary interventions are also provided. It has been contended by Haines et al, (2013) that the Bureau model is firmly located in a children's rights framework, in line with Welsh policy. However the decriminalising ambitions of Triage could also be described as a 'children first' in orientation, even though no claims for a rights-based justification of the approach have been made (although the intention of preventing de-escalation through the system was explicitly stated in *Breaking the Cycle*) (MoJ 2010a). In terms of other differences Triage workers are based in police stations and provide immediate assessments about diversion, whereas Bureau-decisions are only made after a two-week bail period, in which the YOT assesses the young person's situation and circumstances and makes recommendations about pre-court diversion, which are then jointly discussed with the police. Although a local scheme to start with, the Bureau extended across Southern Wales (Cardiff and the Vale of Glamorgan excepted) in 2011 and to west, mid and North Wales in 2014.

Figure 8.5 shows the percentage reductions in FTEs experienced by Welsh YOT between 2008/9 and 2011/12. It shows the relative position of Wales to England and that of the Welsh YOTs to each other. Wales experienced greater falls in FTEs than England, 61% compared to 52% in the period. In Wales the most significant FTE falls occurred in the areas in which Bureau operated (Neath Port Talbot, Merthyr Tydfil, Bridgend and Swansea) and Triage (Cardiff and the Vale of Glamorgan), although they all started at different times and operated in different ways. This suggests the Bureau had the same effect as Triage, as it increased the proportion of young people being diverted from the criminal justice system. An evaluation of the Bureau model in Swansea, showed an 'accelerated' a reduction in the already falling number of FTEs and a positive impact in reductions in the rates of re-offending (Haines et al, 2013:19). An unpublished evaluation of Bridgend's Bureau (Thomas and Cadman 2013) had similar findings and noted the displacement of reprimands to non-criminal disposals. Figure 8.5 also shows that those that had experienced the biggest reductions in FTEs were below the average rate (of pre-court to other disposals) and spanned 13.5% (Cardiff and Merthyr Tydfil) to 26.4% (Neath Port Talbot). The exception to this was Swansea which at 40.8% sat above the Welsh average⁴⁷.

⁴⁷ The figure for 2012/13 was also 40.8%

Figure 8.5: Percentage reductions in the number of first time entrants by YOT area in England and in Wales, between 2008/9 and 2011/12.



Swansea is of interest, as it has had one of the biggest reductions in FTEs in Wales, but also made proportionately greater use of pre-court disposals as a percentage of all disposals than some other areas. The proportions were 45% in 2006/7 when FTEs were at their peak, 56% in 2007/8, 53% in 2008/9, 43.9% in 2009/10 and 44.7% in 2010/11. There has been a decrease since the introduction of the Bureau in 2009, but by comparison with the rest of Wales there were proportionately more young people in Swansea who came to the attention of the police.

The six YOTs that experienced the lowest reductions in FTEs (Carmarthenshire, Conwy and Denbighshire, Powys, Blaenau Gwent Caerphilly, Ceredigion and Pembrokeshire) did not have Triage, Bureau or other forms of pre-court diversion at the time and are also some of the more rural areas of Wales. These YOTs were all above the average rate of pre-court disposals (against all disposals) of 34.7% in Wales, ranging from 45.7% to 55.8%⁴⁸. It is of interest that the more rural areas mirrored a fairly similar picture to that of the South West of England. The reasons for this might be because there is less scope for significant reductions in entrants when there are smaller populations of young people in contact with the criminal justice system, or that pre-court diversion is more difficult to consistently deliver in rural

⁴⁸ The proportion of pre-court diversion to other disposals in 2001/12 was: (Carmarthenshire (52.7%), Conwy and Denbighshire (54.7%), Powys (51.1%), Blaenau Gwent Caerphilly (45.7%), Ceredigion (54.4%) and Pembrokeshire (55.8%).

areas.

The Bureau is based on a model of 'clinics' that are held on designated days. In Swansea young people are bailed to attend the YOT, where the 'clinic' is held. Discussion with a rural YOT in Wales, when it was exploring how to set up a Bureau,⁴⁹ revealed the YOT was not the most suitable venue, as it could be a considerable distance from the young person's home and difficult to get to. As some rural police stations only open on a part time basis (e.g. restricted hours or only on specific days), they could not be used for bail purposes. It was decided to bail young people to one of three police stations (with regular opening hours and custody suites), close to main centres of population and where the Bureau clinics could be held. However, the drawback of using several localities was there was a wider range of individuals to maintain relationships with, and to make aware of the Bureau's model of operation, to ensure it was consistently available. This indicates that the Bureau may be a more flexible model for rural communities, as Triage relies on YOT staff being available in police stations, which is difficult to sustain and justify when offending populations are low. Also the part-time opening of some rural police stations would in any event mean it would be difficult to accommodate.

Pinpointing why substantive reductions have occurred in FTEs is difficult to identify. For instance, it is not apparent why Neath Port Talbot achieved such high falls, numerically and in percentage terms, compared to other YOTs in Wales (see figure 8.5). Analysis of YJB data indicates the FTE reductions started in 2008/9, with the biggest falls occurring between 2009/10 and 2010/11 (38%), prior to the Bureau and then between 2010/11 and 2011/12 (82%), following its introduction in 2011. The initial reductions were therefore achieved without the Bureau being the mechanism, but when introduced, Bureau activity increased the use of non-criminal disposals and the proportion of young people diverted from the criminal justice system. Neath Port Talbot had a preventative service throughout the period and if this impacted on the most problematic children/young people in the authority, there is the possibility it could also have had some effect. The YIP evaluations indicated Neath Port Talbot achieved a significant decrease in the arrest rates of the 'core group'⁵⁰ of young people it worked with between 2003 and 2006, which impacted on local crime levels (Morgan Harris Burrows 2003; Mackie et al, 2008). If this effect continued (with other young people) there is the possibility it contributed to the downturn in FTEs. However, it is also evident from examining the data on Neath Port Talbot's preventative activity in the YIP

⁴⁹ As part of this research an informal discussion was held with the YOT about the development of their Bureau.

⁵⁰ The 'core group' were described as the most 'at risk' young people in the locality

evaluations that it did not tightly focus on its 'core 50' cases, so this does not provide a definitive answer.

8.5 The four YOTs in the study

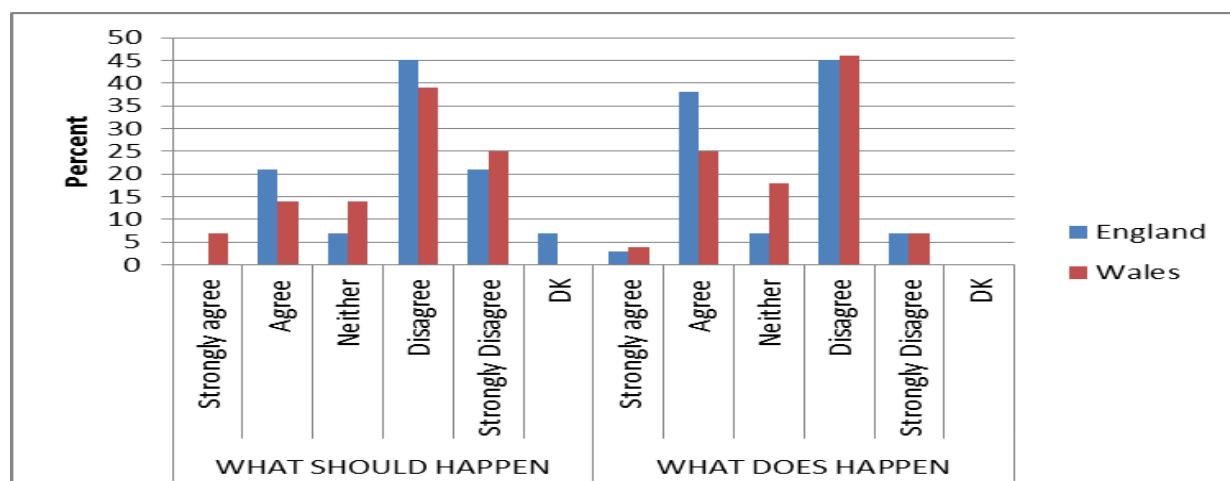
The four YOTs in this study had different diversionary arrangements. Wales A adopted the Bureau, but the police force area in which it is located did not initially use CRs. Wales B did not have a Bureau at the time, but the police used CRs and undertook 'voluntary interviews', meaning that young people (not under arrest) could be asked to attend a police station (to discuss a criminal matter) and be referred for pre-court diversion or prosecution, depending on the outcome of the interview. Both of the YOTs in England were in areas where the police used CRs, but neither had Triage. England B was planning to set up a joint diversion panel with the police to be more involved in the decision-making around cautioning. Before examining what practitioners thought had contributed to reductions in FTEs, their views on diversion were examined.

8.5.1 Punishment for criminal acts

Practitioners were asked whether young people should always be punished for criminal acts. There were similar views as 66% of respondents from England and 64% from Wales did not think that young people should not always be (see figure 8.6), with some suggesting that neither should there be increasing use of sanctions against young people (serious offending excepted):

The conditional caution is moving away from the conveyor approach to justice, where no matter how minor your offence is it moves you towards the court or custody. This approach allows you to sieve out those that will not travel into the deeper end of the youth justice system (EBP12)

Figure 8.6: Comparison of the views of practitioners in England and in Wales that young people should always punished for criminal acts

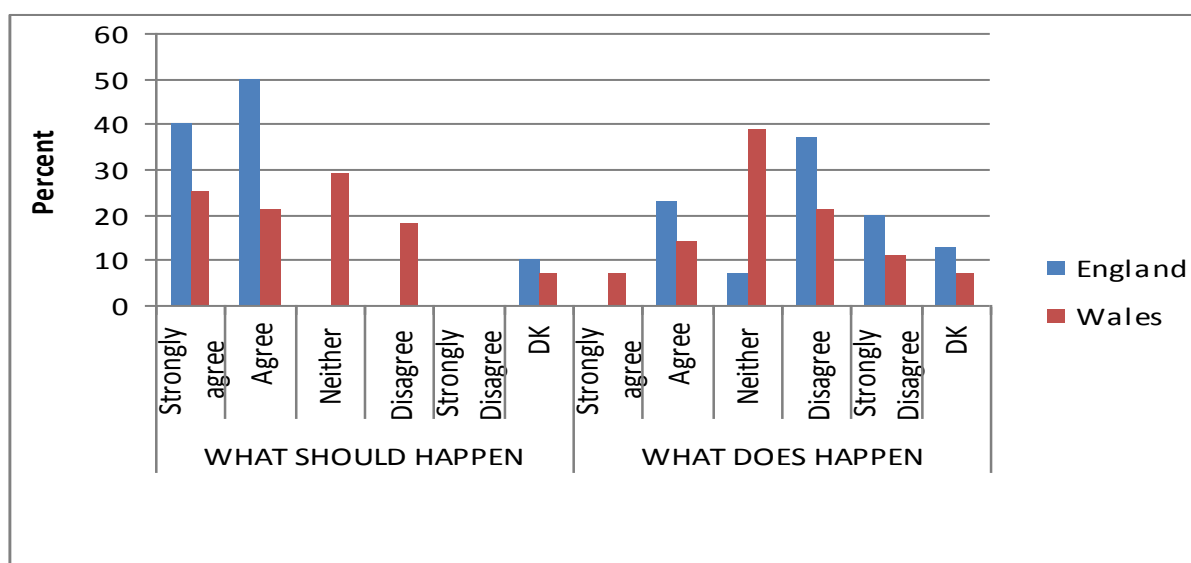


There was less agreement about ‘what does happen’, with 52% of practitioners (in England) and 53% in Wales responding that young people were not always punished for criminal acts. This was mainly because punishment should not necessarily be a component of youth crime prevention, prevention stopped risky behaviour from escalating and pre-court diversion provided alternatives to prosecution. Practitioners in Wales A disagreed more than the other YOTs that young people should be or were always punished, which may be because the Bureau provided the YOT with the opportunity to be involved in pre-court decision-making and practitioners could see its effect. Where practitioners gave a neutral response or disagreed that ‘punishments’ were always imposed, it was because crime is not always detected, young people are not always caught, there would be a lack of evidence to prove a criminal act and serious offending would result in a summons rather than pre-court diversion.

8.5.2 Prioritising informal diversion

Practitioners were asked about the extent to which informal diversion was prioritised over the use of formal sanctions in their area. There was an almost unanimous view this was the case from respondents in England (96%), but less than half of respondents from Wales (46%) agreed (see figure 8.7). Given that evaluations of the Swansea Bureau have shown it increased use of non-criminal disposals and informal action (Haines et al, 2013), this is surprising. Practitioners in Wales B felt there should be more diversionary opportunities: although there were a number of police initiatives operating in the area, there was no joint decision-making with the police (at the time), which may be a reflection of their views.

Figure 8.7: Comparison of the views of practitioners in England and in Wales that informal diversion is prioritised over formal sanctions



Similarly in terms of ‘what does happen’, the English YOTs thought that informal diversion was prioritised far more than the Welsh YOTs (57% of respondents compared to 32%). The proportion of neutral responses was much higher in Wales than in England. Disagreement or uncertainty about the extent of use of informal diversion was not based on a belief that it should not occur, but whether there were sufficient opportunities to ensure that it did. Similar comments were made from practitioners in England A and Wales B, about the need to expand the use of pre-court diversion, with YOT involvement:

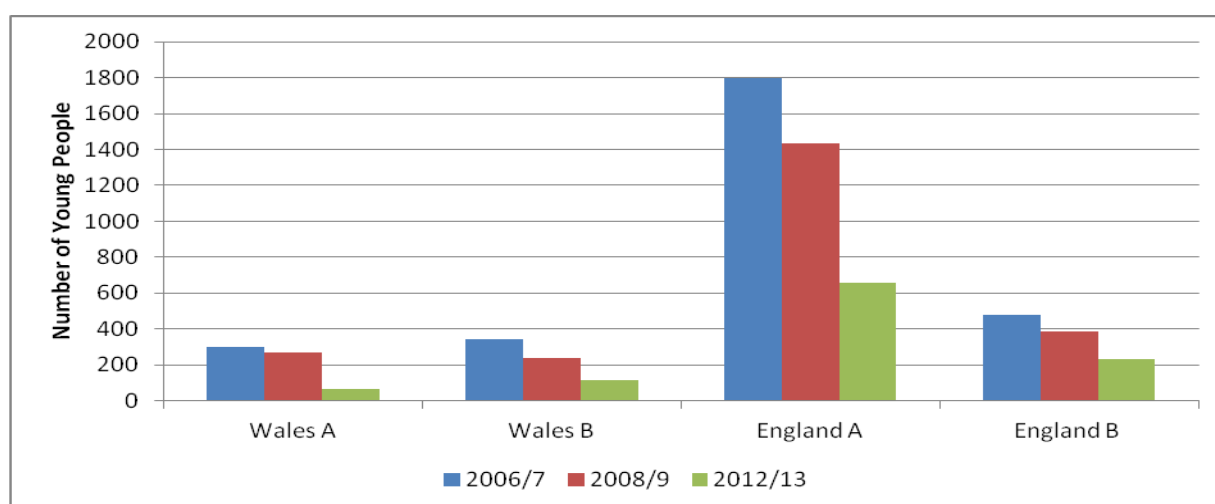
More Community Resolutions are being given by the police, but England A has been slow to look at other methods of diversion to avoid criminalisation (EAP7).

In terms of the comparative views of pre-court diversion, the majority of practitioners in both countries did not consider there should be automatic criminalisation and that efforts should be made to divert young people from the justice system. Whilst this is a feature of the ‘children first’ philosophy and child-rights practice, it was not solely confined to thinking in Wales. Where opinions differed, it was about the extent of use of informal diversion and not the principle of usage. This raised the question of whether there were fewer opportunities for pre-court diversion in Wales than in England, as it appears that CRs were available more extensively in the two English YOTs than the Welsh ones. It is possible the emphasis that Wales B put on prevention also influenced the Welsh response. This suggested that examining FTE outcomes and the reasons why reductions occurred across England and Wales merited further investigation.

8.6 Reductions in first time entrants

Although there were different models of operation, all four YOTs had experienced a decline in their FTEs, as figure 8.8 shows. This was examined from a 2006/7 benchmark when FTEs were at their peak, in 2008/9 when the OBTJ target was removed, and in 2012/13 from the YJB's regional disposal data. The reductions since 2006/7 were 78% in Wales A, 63% in Wales B and in England A and 51% in England B, which mirrors the national downturn in FTEs.

Figure 8.8: Reductions in the number of FTEs in the participating YOTs between 2006/7 and 2012/13 from YJB regionally reported data on disposals



Wales A experienced the biggest fall, which may in part be attributed to the accelerated effect of the Bureau, which occurred elsewhere (Haines et al, 2013). However, Wales B and England A which are very different YOTs experienced the same level of reduction. This is of interest as Wales B had a targeted prevention service and was more inclined to attribute the impact of its prevention work on FTE reductions than any of the other YOTs. However, the level of FTEs in Wales B reduced by just over 52% following the removal of the OBTJ target, which appears to have correspondingly occurred in England A (55%). Likewise reductions in FTEs in England B did not stop even though the YOT lost its prevention service in the period examined. These examples suggest the impact of prevention on FTEs was not likely to be as great as pre-court diversion.

Practitioners were asked what they considered had affected FTE reductions. There was agreement (with a greater degree of exception in Wales B), that it was due to changes in police practices, which raised the threshold for entry to the criminal justice system, because young people were being given more chances before they would be prosecuted. The role of

the Bureau (in Wales A) and CRs (in the English YOTs) were regarded as contributory to this:

We have seen a big shift in number since [the Bureau] started a year ago. There are a few chances before you get through the door [to court] (WAP10)

This [a Community Resolution] is likely to be the first outcome for a young person coming through the system, so a big proportion of young people have been sliced out, so the threshold to entry has risen (EBP1).

This suggests that different approaches can be effective and what is important is there are options in place and possibly less so, what they are, provided the police, who gate-keep pre-court decision-making are involved. Despite the changes, practitioners did not necessarily think that young people were offending any less; what had changed was how the police dealt with them when they did. One of the English YOTs monitored the changes:

The FTEs have not reduced. When we do our management boards reports and present the FTE table, we also include CRs. We put these on top of our table and we have seen very little change in the level of offending. So there is not a change in behaviours, the change is in how we are responding, managing and processing it (EBP12).

It is difficult to quantify this, but it suggests it might merit further investigation, particularly as the Home Office is now collecting some data on the number of CRs issued (Smith et al, 2013). Practitioners in both countries were aware the police were no longer target-driven (although there was less commentary about this in Wales B) and this had reduced police attention on young people:

In [England A] at one time all officers had the target of making four arrests a month. If it got to the end of the month and you stop and search enough young people you will either come up with someone who has cannabis on them or somebody will get unhappy that they keep getting stopped and searched and will kick off and then you have them for resisting arrest or assaulting a PC (EAP9)

The police used to use the kids to get the ticks in their arrest box. They were easy pickings and would bust kids left, right and centre if they needed to hit their targets (WBP5).

It was clear from some of the examples provided that young people had been drawn into the justice system for youthful misdemeanours rather than criminal behaviour:

The worst one we had was a young person who had a three month referral order for riding around a roundabout the wrong way on a bike. That child did not need to be worked with and it was a waste of resources (EAP12).

This suggests that police-targeting had unnecessarily criminalised some children/young people for misbehaviour, which the literature suggested had occurred (Bateman 2013a) and clearly conflicts with what is in their best interests. Practitioners (in both countries), generally welcomed the less formulaic, more relaxed and discretion-led use of pre-court disposals, as a more proportionate response to minor delinquency:

The new system makes sense that kids already on a youth rehabilitation order who then do something stupid like nicking a bottle of milk are put on another order for six months – what are you going to do with them. Once you have done the victim awareness sessions and a bit of impulsivity work, where do you go from there? Is it right that for nicking a bottle of milk that you then spend your time clearing acres of brambles (EBP10).

However, some practitioners had reservations about the changes and preferred the previous system of reprimands and final warnings, which limited the number of pre-court diversions, to that of the new system of open-ended cautioning. These practitioners (whether in England or in Wales) thought some young people responded better to limitations, even though further transgressions could lead to a criminal record:

I don't know how the new cautioning system is going to work; this was the process when I first worked in youth justice. It felt there were no consequences and no boundaries. I am concerned about going back to it and what the impact will be. That said, I like the flexibility and for petty offences to be dealt with in a different way, but I think the Final Warning system worked well. There needs to be a happy medium; not opening the floodgates, but having some flexibility (WBP11).

There was apprehension about whether informal disposals were utilised fairly and equitably and in particular how many chances should be given before a formal sanction was imposed. There has been criticism of the adult system of cautioning and its application for more

serious offences (H M Government 2013) and there was some evidence of this regarding youth cautions:

There have been a number of cases that have come up over the last few years which I felt should have gone to court, but have not because the CPS felt there was not enough evidence. We had a 17 year old and 19 year old who had jointly raped an 11 year old girl. We really did not understand this decision (EBP9)

This suggests the new system may provide a half-way house for those cases that lack evidence for prosecution, but where there is a necessity to take some form of action. Another concern was whether young people who needed help and support were identified and assisted, either because the police would not recognise they had problems, or because there was a lack of opportunity for the YOT to intervene at an earlier stage:

I noticed one case that appeared to be for a borderline first, but grave offence [the young person] had a lot of contact with the criminal justice system. Because the benchmark seems to have risen he is sent on his way with a warning. This works for a huge number of young people but it's another blunt tool because it does not net the ones that merit attention (WBP6).

Other comments related to the restorative element of the pre-court disposals, some regarded this as a good way to deliver justice, as it offered the prospect of victim satisfaction and did not negatively impact on young people's lives. However, for others the process was not restorative enough:

Young people get told if they do not say sorry to that individual they will get done, where is the choice in that? That is not restorative that is coercion. The approach to saying sorry is not likely to be meaningful, it's a quick fix. If the YRD was referred to us it could work. Police officers don't understand restorative justice, but it avoids the paperwork and is an instant disposal (WBP5).

In conclusion, the foregoing analysis indicates there were some overall differences in what practitioners attributed changes in the system to; Wales A was more inclined to think it was due to changes in police practices and the Bureau, Wales B that it was due to prevention and England A and B due to the use of CRs. The analysis also reveals there are some tensions surrounding the current approaches to pre-court diversion that were not about what options should be available, but how they are used. Whilst practitioners considered pre-court

diversion should be employed to avoid young people being unnecessarily drawn into the youth justice system, there was also a degree of qualification to this. Not all liked the open-endedness of the new system, there was concern about inequality of application and opportunities to intervene were more limited or would come too late.

Some practitioners were more interventionist in their thinking than might have been anticipated and not all viewed the new system of cautioning as a wholly good thing, although agreed that not penalising activity that could barely be described as criminal was positive. It is possible this is because the focus of the current youth justice system has been interventionist since its inception in 2000, which might make it culturally difficult to depart from. In terms of a 'children first' approach it is potentially problematic to want to limit the opportunities given to young people to amend their behaviour and there were practitioners in both countries who thought it was the right approach.

It could be argued the whole system and not just pockets of it have become more 'children first' in overall orientation, as a result of Coalition Government policy, although this is not the philosophy that has underpinned it. Any differences between England and Wales have been about what the police have adopted in their locality, how they have deployed the options, as well as any joint initiatives with the YOT. The removal of targets has enabled the police to become more 'children first' in their orientation, as practitioners were clear young people were not being targeted to the same degree as they had been previously. Whilst joint decision-making between the YOT and the police is clearly beneficial, so is the flexibility and discretion the police have for dealing with low-level incidents. It also appears that whilst the aspiration of the WG might be to deliver a 'children first' system, that all relevant parties have to be in accord with it, and be able to deliver it and in this respect UK Coalition Government policy has been an enabler.

8.7. Impact on caseloads

A final area worthy of comment is the impact of increased pre-court diversion on the level and nature of YOT caseloads. There were a number of comments made about them having significantly diminished:

We have been low in casework for the last 18 months. We had a court in March with one young person in it (WBP5)

My caseload used to be 20/25, now it's around 12 and some of my colleagues do not even have a caseload of that size (EAP9).

Practitioners (in England and Wales) reported an impact of this was caseloads now substantively comprised young people with complex needs, which correlated to the removal of a substantive body of low-level offenders from the system that had left a distilled population of young people with entrenched problems. A number of sources have suggested that the nature of caseloads may have changed, for example, 'youth offending services are dealing with a much more concentrated mix of challenging behaviours and needs' (WG 2012b:17) and that 'young people coming into the criminal justice system are, on balance, more challenging to work with' (YJB/MoJ 2013:51). Feedback from three of the four YOTs in this study supports this (although practitioners in Wales B did not specifically refer to it).

Some practitioners felt caseloads contained young people with more deep-rooted problems because the opportunities to intervene earlier were less available, so when young people came to the attention of the YOT, they did so with a higher level of need. However, with smaller caseloads practitioners also had more time to find out about young people and their difficulties:

We now have more time for the chaotic and the complex. When the workload increases you do what you have to do, but you spend less time with them; you may be dipping in and out rather than doing in-depth personal work. Maybe be 10 years ago you would not have dug as deep, so you may not have been as aware either (WAP10).

When I first started there were some incredibly complicated characters, we just did not have the time to spend with them. At the peak I had 24 cases. These cases have always been in the system, you just know more about them (EBP3).

This is of interest as it suggests the impact on the youth justice cohorts whether in England or in Wales were experiencing similar changes, and for practitioners, similar challenges.

8.8 Consensus on pre-court diversion

There were not marked differences between England and Wales in terms of the way in which practitioners wanted the system to react to children and young people when they get into trouble with the law: pre-court diversion was a necessary part of it. There were some differences of approach amongst the individual YOTs, which related to the culture of the teams, how services had developed, rather than because of fundamentally different philosophical approaches, which based on national stereotyping would have characterised England as more interventionist and Wales as more diversionary. The differences that existed were local and not national and in some instances individual rather than collective. It indicates that at a practice level there is not a more obviously child-orientated approach to prevention and pre-court diversion in Wales than in England, although the Bureau has been an important national development in Wales and has impacted on those areas in which it operated (in Southern Wales) in accelerating reductions in FTEs. Wales has therefore achieved reductions in FTEs that were not reliant on the availability of Triage. It is also noteworthy that the Bureau model was put in place before the UKG provided more flexibility in pre-court options and demonstrates that local initiatives can be successful and the criminal justice system does not have to be reliant on funding initiatives or legislation to effect changes in practice (see also Kemp et al, 2002).

The previous chapter identified that despite targeted preventative activity being a central strand of UKG and WG policy for a number of years with considerable funds being expended on it, there is a lack of evidence that it significantly impacted on FTEs. What has made the difference is how the police operate, as they gate-keep entry to the criminal justice system and the collaboration between YOTs and the police in determining outcomes for young people has been highly influential. In terms of taking a 'children first' approach and one that is consistent with the UNCRC, it confirms that efforts are best focused on activity that directly seeks to divert young people from the criminal justice system, as this is far more likely to reduce criminality, than imposing formal sanctions and interventions for minor misdemeanours and low-level first offences (Kemp et al, 2002; Bateman 2003; McCara and McVie 2010). The WG has largely chosen to focus on initiatives that align with UKG policy, although there are other actions it could have taken, such as encouraging a non-interventionist approach to pre-court diversion. However, this might be a moot point as although the narratives in England and in Wales are different, both countries have experienced very similar levels of reductions in FTEs overall, even though their journeys to get there have taken different routes.

Chapter Nine

The use of custody

9.1 Context

One of the areas of youth justice that has attracted considerable attention is the use of custody for children/young people. Historically it had been higher in England and Wales, than in other European countries (Hazel 2008). The UN Committee has raised consistent concerns about this (in 1995, 2002 and 2008), in particular whether custody is used as a last resort.⁵¹ From a welfare perspective, imprisonment is regarded as a damaging experience for children/young people that does not reduce the likelihood of re-offending (Goldson 2005 and 2010). The YJB's re-offending data indicated the greater the number of custodial episodes experienced, the greater the likelihood of re-offending occurring. The rate for those that have not experienced custody is 34%⁵², 73% for those who experience one custodial sentence, but over 80% for those that have had up to six custodial sentences (table 9.7 proven re-offending data for 2011/12),⁵³ although, it is likely that those who receive custodial sentences are more serious and prolific offenders, who may have greater propensity to re-offend.

The UKG's position is that children/young people are made the subject of a custodial sentence as a last resort, where the persistence and seriousness of their offending makes it unavoidable or because there is a risk of harm to the public (UKG 2007: MoJ 2010a). However, some commentators do not agree, as over a third of young people who received custodial sentences had not committed either a violent offence or one serious enough to warrant deprivation of liberty and breach⁵⁴ made up around three-fifths of the non-violent less serious offences for which children/young people were imprisoned (Jacobson et al, 2010). Others concluded that sentencers used custody, because when faced with persistent lower-level offending behaviour, felt it was unavoidable and inevitable (Solanki and Utting 2009).

The WG's view was custody is sometimes necessary but should be reserved for those children/young people that present a danger to the public (Hart 2004) or 'if it is in the public interest' (Hart 2006:38) and as a last resort (WG/YJB 2004). There was recognition the best

⁵¹ This states that a child shall only ever be arrested or put in prison as a last resort and for the shortest possible time.

⁵² Percentages have been rounded

⁵³ This information was not reported in the same way for 2012/13, so figures could not be updated.

⁵⁴ This is of bail, conditional discharges, community orders, detention and training order licences and ASBOs.

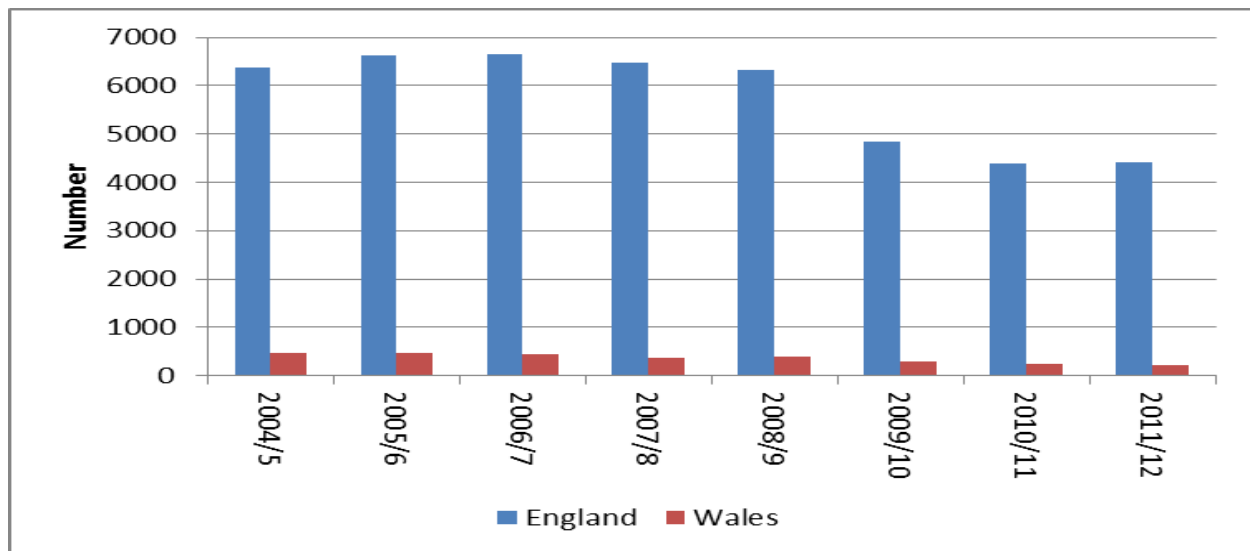
way to avoid the use of custody was to ensure community alternatives were fully utilised and to retain young people 'at lower levels of interventions' (WG/YJB 2004:2): a strategy that can contribute to reduced use of custody (Bateman and Stanley 2002). More recent statements indicate a desire to move nearer to the principles of the UNCRC in ensuring there are alternatives available for those at risk of imprisonment, which can help to ensure custody is used as a last resort (WG 2014).

9.2 Custodial trends

The position described above is historical, but is of relevance because of later discussion about how the demand for custodial places was addressed in Wales, as numbers escalated (sections 9.5 and 9.6). This section examines how custodial trends in England and in Wales have changed over the last decade. The period 2004/5 to 2011/12 has been examined. Two YOTs did not report regional data to the YJB in 2012/13. Sefton had 0.4% of youth justice disposals in England and Cardiff 7%, in Wales. The absence of Sefton's data for 2012/13 would not have a discernible impact on the statistics for England, whereas the lack of data from Cardiff would have a larger effect on what was reported for Wales, as a result the data has been examined to 2011/12.

Figure 9.1 shows that custodial sentencing fell more markedly in Wales between 2004/5 (when comparative data was first available) and 2011/12 than in England – 57% compared to 31%. Wales had a continuous fall since 2004/5, whereas the reductions started later (in 2006/7) in England. The most marked decreases in both counties occurred from 2008/9 onwards, when the police OBTJ target also changed. Since then, custody has fallen by around half; 49% in England and 55% in Wales and the down-turn has continued (MoJ 2013f, chart 2.1).

Figure 9.1: Number of custodial sentences in England and Wales⁵⁵ between 2004/5 and 2011/12



The changes are of interest as they started to occur just after the last UNCRC reporting round recommended the UKG should (UN Committee 2008):

Develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle.

The reductions in custodial rates have been achieved without any discernable change arising directly from the UN Committee's specific recommendations, although it should be noted that the Criminal Justice and Immigration Act 2008 (CJIA) introduced intensive supervision and surveillance (ISS) and intensive fostering as alternatives to custody (although the latter does not have national coverage). Whilst the CJIA confirms that community alternatives should be available, the rate of custodial sentencing had started to fall before the implementation of the Act, so does not indicate the changes can be attributed to it, indeed ISS was available before this. Further, whilst 'last resort' is not a statutory principle, magistrates have to take it into account when sentencing (Sentencing Guidelines Council 2008), but it is a subjective judgement, open to wide interpretation, and has not prevented differential sentencing (Bateman and Stanley 2002).

⁵⁵ 2002/3 is the first year from which it is possible to disaggregate Wales from England from YJB statistics

There have been a number of strategies that have been employed to reduce the use of custody. The YJB set YOTs targets for custodial reductions – by 10% between 2005 and 2008 (YJB nd.b: 20). This was not achieved and policy was altered to focus on ‘ensuring the safe and effective use of custody’ (YJB 2008c:11). Other YJB strategies included adding custodial reduction to performance frameworks for local government public service agreements (England only), writing to chairs of youth court benches in high custody areas on several occasions and to local authority chief executives in Wales (with the WG) to draw their attention to custodial sentencing levels. Other YJB approaches concentrated on promoting the confidence of the courts in YOTs and issuing guidance to support this (YJB 2009b). Target setting was reintroduced when custody reduction pathfinders commenced in four areas in England in 2011, which sought to incentivise local authorities to reduce custody in these localities (Wong et al, 2013). They were given individual targets for custodial reduction ranging from 10% to 20% against a 2010/11 baseline. At the end of the first year one site had achieved a 23% reduction and three had increases ranging from 4% to 23%, due in two instances to the public disturbances of 2011 (ibid: 2013). Both of these YOTs withdrew from the pathfinder project; however the remaining two continued and exceeded their targets (Wong et al, 2015).

In addition there was sustained campaigning by the voluntary sector, notably the Prison Reform Trust’s ‘Out of Trouble’ campaign (between 2007 and 2012). It sought to engage chief executives and elected members in high custody areas and offered consultancy support to YOTs in England. It has not published any of its findings because areas were guaranteed anonymity to increase the take up of support offered, so the impact cannot be assessed. In Wales, the WG were sufficiently concerned about high levels of custody in Bridgend and Merthyr Tydfil, to commission Nacro Cymru (2011a and 2011b) to conduct enquiries into why this was the case and to make recommendations to the respective YOTs and youth court benches about their practices. Both areas have subsequently experienced significant custodial reductions and it is possible this level of scrutiny was influential.

Allen’s (2011:3) investigation into why custody fell between 2008 and 2011 concluded that:

A range of dynamics behind the scenes have worked together to reduce the number of children appearing before the courts, reducing the proportion of these children who are sentenced to custody.

One of the reasons for the reductions was attributed to a fall in the number of cases being processed through the courts and a drop in the proportion being sentenced to custody. This

accords with the findings of the preceding chapter as greater use of diversionary measures has reduced the number of FTEs and the court population. However this in itself does not guarantee reduced rates of custody, if sentencers continue to impose custodial sentencing to the same degree on the diminished cohort (Bateman 2013b). Delaying entry into the formal system extends the availability of formal disposals, means that it takes longer to establish a persistent/prolific offending history and decreases the likelihood of failing to comply with court orders as there is less exposure to them, all of which extend the pathway to custody (ibid: 2012b). It is therefore likely that the falls in custodial sentencing have been achieved through better fulfilment of article 40 of the UNCRC - avoiding the need to take formal criminal justice proceedings against children/young people, rather than increased realisation of 'last resort' and greater use of or availability of community alternatives (article 37).

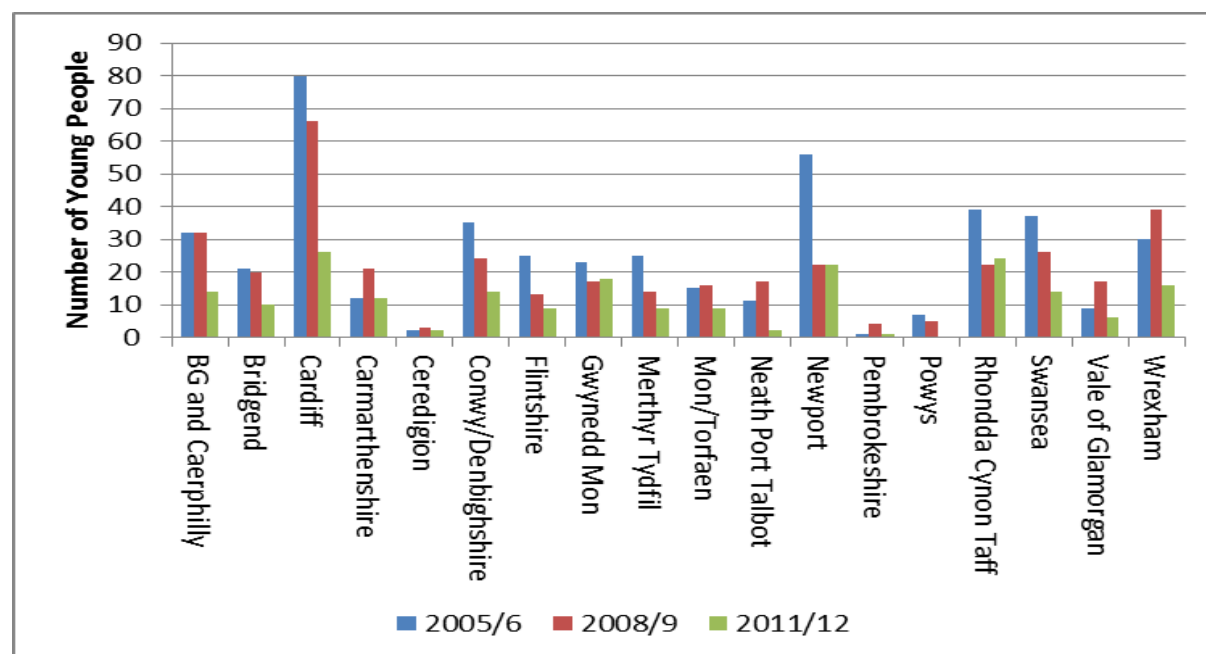
9.2.1 Differential use of custody

Despite the carceral downturn, there are variations in the use of custody. The use of custody in Welsh YOTs has been examined in selected years to illustrate this (in figure 9.2). The data is taken from 2004/5 as prior to this Powys and Ceredigion reported as one YOT and 2008/9 was the year the OBTJ target was removed. The range of reductions in custody this period, across the Welsh YOTs was from 22 to 100 per cent (this included one rural YOT that had no custodial cases in 2011/12). There was no change in three areas as the custodial levels in 2011/12 were the same as in 2004/5. The large rural areas of Ceredigion, Pembrokeshire and Powys have extremely low custodial levels; often single numbers of children/young people in a given year (not uncommonly one or two). It has also been well documented that Merthyr Tydfil had one of the highest usages in England and Wales; at its peak in 2004/5 custodial sentences made up 21% of all of its court disposals (the national average at the time was 7.5%). In 2011/2 it was 9%, which is still above the national average of 6.1%, but the gap had reduced somewhat. In 2012/13 custody made up 15% of Merthyr Tydfil's court disposals, but this needs to be set within the context of a total court population of 52 young people (the statistics are taken from YJB reported regional statistics for the relevant years).

Disparity between high and low custody areas is influenced by the relationship between magistrates and YOTs. A key factor in custodial decision-making depends on the extent to which magistrates have confidence in the YOT to carry out what is proposed in its PSRs (Bateman and Stanley 2002). Further, 'traditions of geographical autonomy' (Field and Nelken 2010:304), can lead to cultural differences between magistrates and YOTs, within England and Wales and between England and Wales. Nacro's (2011b) study of custodial

sentencing in Merthyr Tydfil identified that traditions and norms had developed that may well have influenced the sentencing culture of the youth bench, which was small in size, with little turnover in its membership and a high degree of accord between its magistrates about sentencing decisions. The same applied to the YOT and neither group significantly questioned their own or each other's practice.

Figure 9.2: Use of custody by Welsh YOTs: number of cases in 2005/6, 2008/9 and 2011/12⁵⁶



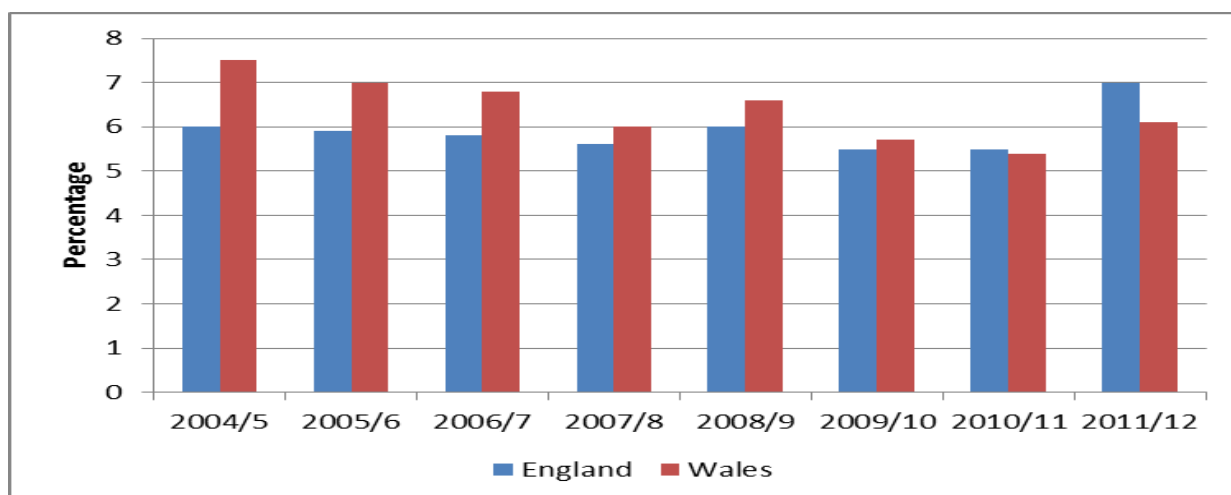
9.2.2. Custody as a proportion of convictions

When custody is examined as a proportion of all convictions (table 9.3), up until 2010/11 Wales made greater use of custody than England and has a largely downward trend until 2011/12. At this point the trajectory reversed and both countries experienced a sharp increase in the proportionate use of custody. One possible reason for the increase in 2011/12⁵⁷ is that as the youth justice population decreased and young people who had committed lower level offences were progressively removed from it, the profile of the youth justice cohort changed. This point was discussed in the previous chapter. If there is a more pronounced profile of young people subject to court orders, who have complex problems, it could impact on the proportionate use of custody, particularly if they have a greater propensity to re-offend or be breached.

⁵⁶ The chart has not been updated for 2012/13 because of missing data for Cardiff.

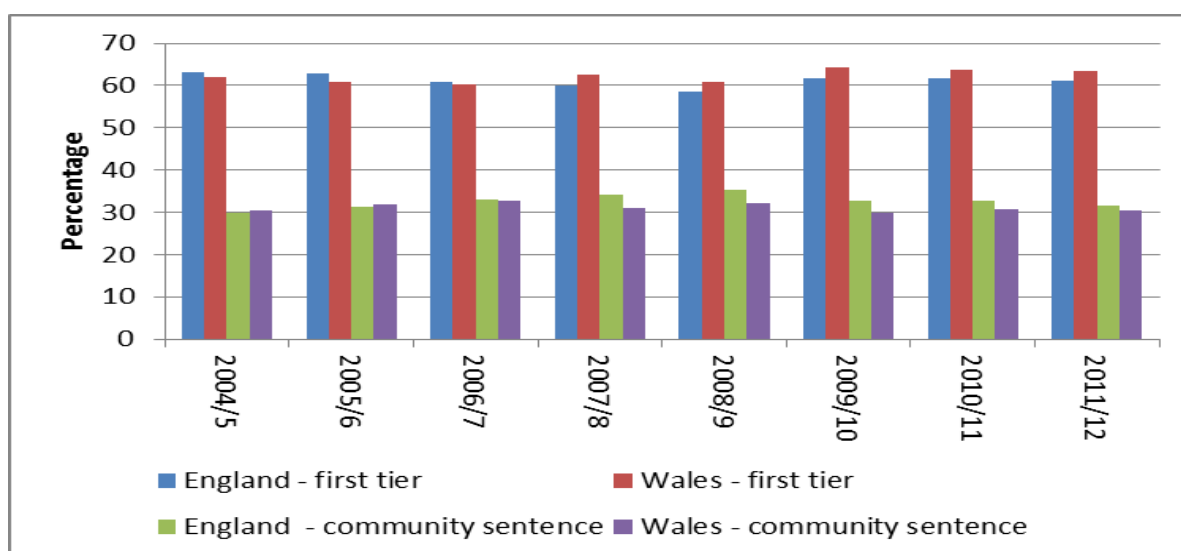
⁵⁷ It is also evident in 2012/13 in England and Wales but data is missing from Cardiff so has not been included

Figure 9.3: Custodial sentences as a proportion of all convictions – comparison of trends in England and in Wales



The distribution of sentencing options has been analysed to see if it throws any additional light on the trends. Figure 9.4 illustrates the use of first tier and community sentences as a proportion of all convictions.

Figure 9.4: Use of first tier sentences and community sentences as a proportion of all convictions – 2004/5 to 2011/12



In both countries 2006/7 was a pivotal year, because it was the peak year for FTEs in England and Wales; England had proportionately more FTEs than Wales at this point and its custodial population was also at its height, whereas in Wales the custodial downturn was well established. Figure 9.4 shows a very similar overall pattern for England and Wales, but Wales made greater use of first tier penalties from 2007/8 onwards, suggesting the wider

diversionary impact was experienced at an earlier point than in England. The increase in first tier penalties was likely to be as a result of the removal of minor offences from court, (which were now subject to pre-court diversion), and cases that would have previously warranted a community order, now receiving a lower tier penalty. Wales made proportionately less use of community sentences than England, although lower use of first tier penalties did not occur until a year later, with peak use of community penalties occurring in both countries in 2008/9, followed by a sustained reduction. Use of community penalties has been broadly level since then as the percentage point differences in the trajectories of both countries is less than 1% in each instance⁵⁸. This analysis supports the hypothesis that as the rate of diversion increases, so does the use of first tier penalties (Bateman 2013b), whereas the proportion of community sentences falls, as does the rate of custody. The rate of diversion can therefore have a direct impact on custodial sentencing and the whole system benefits from a less interventionist approach.

9.2.3 Breach

Exploring use of breach is important because of concerns it contributed to increased levels of imprisonment (Bateman 2011b; Hart 2011). There are also tensions with the principle of last resort, when custody arises from breach for minor misdemeanours, rather than criminal offences (Children's Rights Alliance for England 2013). Figure 9.5 demonstrates that England and Wales mirrored fairly similar patterns in use of breach, but diverged in 2006/7 (the peak year for FTEs). Use of breach continued to increase in England for another two years, whereas it declined in Wales from 2007/8 onwards. This also corresponds with the point when fewer community sentences started to be made in Wales⁵⁹. In 2011/12⁶⁰ there were increases in breach in both countries which matches the rise in the proportionate use of custody in that year.

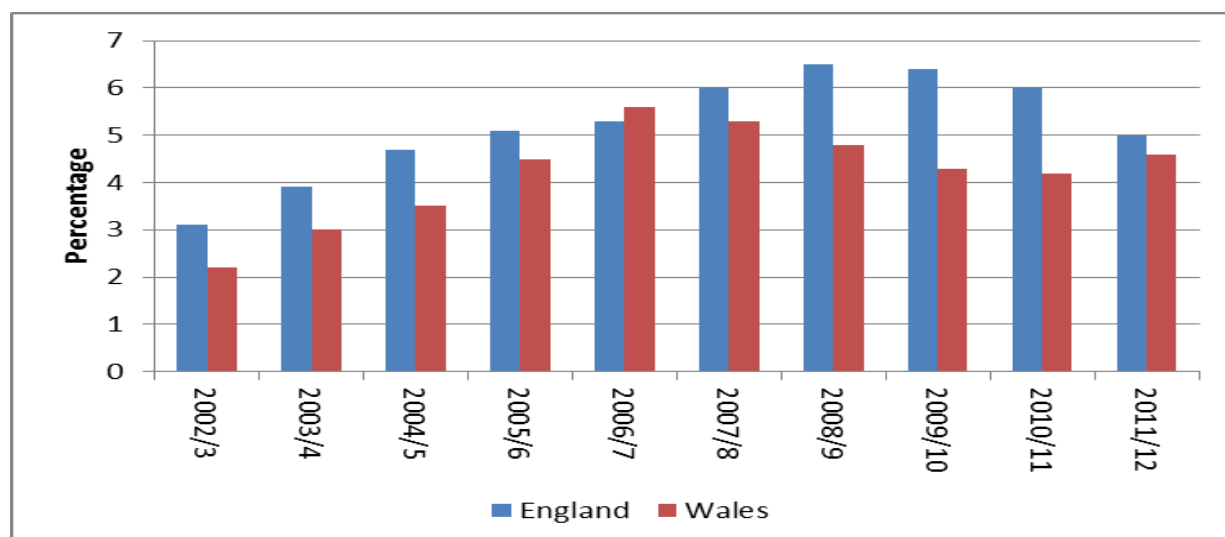
In terms of influencing factors, in 2004 the YJB introduced the monitoring of breach against *National Standards* (which continued until 2007/8). This included the enforcement of orders, including following up failures to comply, issuing warnings and taking breach action (YJB nd.c). Performance monitoring data indicated the level of compliance with these elements of *National Standards*, increased during this period and the initiation of breach action rose from 52.5% in 2005/6, to over 70% in 2007/8. Breach of a statutory order has for some time been either the third or fourth most prevalent reason for a custodial sentence (YJB data 2011/12, supplementary volumes: table CH7 young people in custody).

⁵⁸ For 2012/13

⁵⁹ Although there was a temporary rise in 2008/9.

⁶⁰ Although not shown because of Cardiff's missing data the indications are that 2012/13 has too.

Figure 9.5: Breaches of statutory orders as a proportion of all offences in England and Wales – 2002/3 to 2011/12



One of the dilemmas that YOTs and courts face when dealing with non-compliance is ‘who gets what chances, who gives them, how many times and in what circumstances’ (Nacro 2011a:6). There is the possibility that Wales may be more tolerant because of its ‘children first’ philosophy (if breach was not in young people’s best interests). Alternatively the large rural YOTs (Ceredigion, Pembrokeshire and Powys) and their smaller populations may offset some of the higher breach levels of the larger metropolitan areas, or those YOTs that have a more assertive attitude to breach. Rural areas may also have lower rates of breach because practitioners are more likely to travel to the young person and hold their appointments in their home, which minimises the likelihood of non-attendance. Further, when practitioner attitudes to the administration of court orders are examined, there is a wide spectrum of views and different levels of tolerance towards young people’s behaviour, as well the overall ethos of the team towards breach and how practitioners enforce orders within this framework (see also chapter six), which will influence what action is taken.

It is not possible to develop a ‘typology’ of localities which ‘correlated’ with a high breach/high use of custody rate or the converse (Hart 2011: 22). For example, although Merthyr Tydfil had a high use of custody, its breach rates were below the national average (Nacro Cymru 2011b) whereas those in Bridgend which also had a high rate of custody were above the national average (Nacro Cymru 2011a). In some localities particular years stand out, which may be due to the nature of caseloads being worked with at the time. Further, whilst there may be a ‘dampening down’ effect from YOTs that work with small caseloads, single incidents of breach (or custody) can significantly inflate proportionate use. It is not possible to disaggregate breach action for non-offending non-compliance such as missed

appointments, from offending-related breach, which might indicate whether practice is differentiated in any way. There are therefore a number of possible reasons why breach rates may differ, but none indicate a conclusive difference between England and Wales.

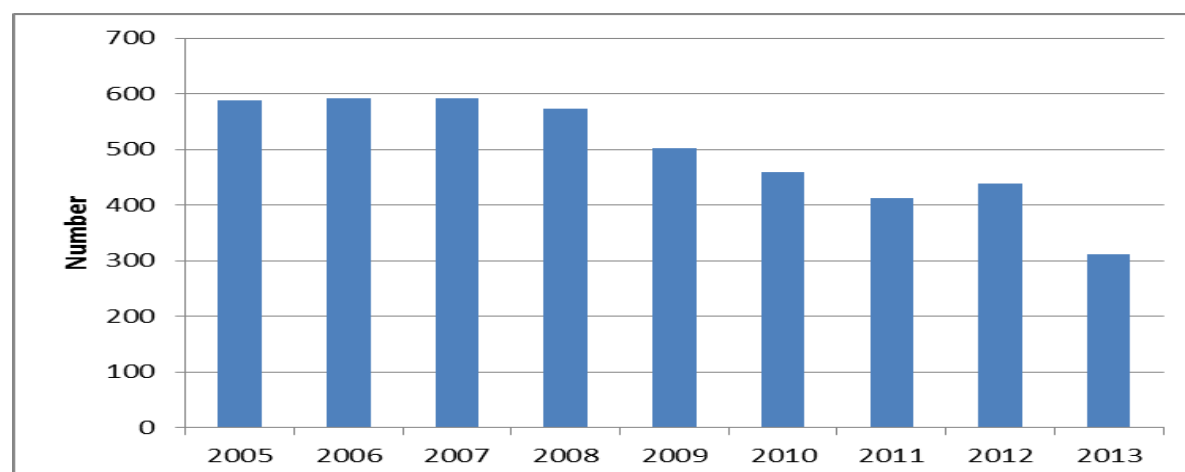
9.2.4 Remand

When examining custodial usage, the use of remands merits examination. It is of interest from a children's rights perspective as a high proportion of those remanded do not pose a threat to the public and are not imprisoned on sentence (Gibbs and Hickson 2009). Between 2002/3 and 2008/9 remand trends in England and in Wales could be disaggregated. When remands in custody and court ordered remands were examined as a proportion of all remand outcomes, it showed that Wales remanded proportionately fewer young people than England, with the average rate of remand for each country being 6.3% (England) and 5.1% (Wales). This mirrored the lower custodial sentencing trend in Wales. Both countries experienced a sharp increase in remand rates between 2007/8 and 2008/9 from 6.6% to 7.7% in England and 5.5% to 6.1% in Wales (custodial sentencing slightly decreased at this point). From 2009/10 onwards the MoJ and YJB stopped reporting remand data regionally and changed the method of data collection, to reflect the number of young people remanded and not the number of remand episodes, so it is not possible to compare the trends for England and Wales separately since then. However, figure 9.6 shows the combined picture and demonstrates that, as with custodial sentencing, there has been a marked and continuing decline since 2008.

In December 2012 the budget for remands in custody was devolved to local authorities to incentivise them to provide alternative arrangements. The lack of suitable bail accommodation has been cited as a reason for denial of bail (Gibbs and Hickson 2009; Thomas 2013) and is within the capacity of local authorities to address. The rationale for the devolution of the remand budget being that if local authorities have to bear the cost of a remand, they ensure there are community options available. Since April 2013, young people cannot be remanded in custody unless there is a realistic likelihood they will receive a custodial sentence. Both changes arose through the LASPO Act 2012. The reductions in the remand population started before these initiatives were in place and have continued since. There has been a decrease in custodial outcomes since the introduction of LASPO, from 43% in 2009/10 to 37% in 2013/14. However, the proportion of young people who received a community sentence or were acquitted has not reduced as the act intended, as 62% of young people were not given a custodial sentence, following a remand in 2013/14 (compared to 54% in 2009/10) (Supplementary Tables – Youth Justice Statistics 2013-14,

table 6.5). However without the ability to disaggregate Wales from England it is not possible to establish whether there is any difference between the two countries.

Figure 9.6: Remand episodes in England and Wales between December 2005 and December 2013



The fall in the overall use of remand mirrors that of the sentenced population according to the MoJ's Monthly Youth Custody Report (2013f - table 2.5 legal basis). This is in accordance with Bateman and Stanley's (2002) findings that remand and sentencing patterns tend to follow each other e.g. there is a greater use of remand when rates of custodial sentencing are high and vice versa. However what does not seem to have radically changed is the proportion the juvenile remand population (on average) makes up of the custodial population. Gibbs and Hickson (2009) advised that in 2009 16% of the adult prison population were made up of remands, which had reduced to 13.5% by June 2014 (MoJ Prison Population Tables table A1.1). The proportion that juvenile remands make up of the prison population has however increased from 21% in 2008 to 25% in June 2014⁶¹ (ibid).

The analysis of custodial trends demonstrates that Wales made proportionately less use of custodial sentences than England and in recent years has experienced a much more substantive numerical decrease in its use. The reasons for this are difficult to pinpoint but differences between England and Wales include proportionately fewer remands in custody (for the period over which it was possible to measure them), a lower use of custodial sentences as a percentage of all convictions and proportionately less breaches of community sentences. However, it is not clear whether and to what extent this can be attributed to the 'children first' approach, or whether these changes occurred as part of the

⁶¹ This figure relates to 15 to 17 year olds only in young offender institutions.

general down-turn in the youth justice population. Further, whilst the WG has the aim of custody being used as a last resort and the use of community options being maximised, (although it can influence what the content of programmes and interventions look like by determining how its funding for the youth justice sector can be used), its ability to develop alternative-to-custody options (that require legislative change) is restricted, as is its direct influence on the use of custody, because it is controlled by the non-devolved court system.

9.3 The custodial conundrum

The YJB manages the placement arrangements for children/young people for the duration of their remand or sentence and commissions places from young offender institutions (YOIs), secure children's homes (SCH) and secure training centres (STCs). Minimising the use of custody are national objectives for the UKG and WG and in Wales there has been significant discussion about where children/young people should be placed. In 2001, of 147 Welsh-resident young people who were in custody, only seven (5%) were held in Wales (Select Committee on Welsh Affairs 2001). The YJB had a target of ensuring that by March 2004, 90% of young people in secure facilities were placed within 50 miles of home. Juveniles from Wales were in custody further away (on average 68 miles), than young people from England (55 miles away) (ibid). Hillside SCH was opened in South Wales in 1996, however not all its beds were designated for young people in the justice system (the YJB funded 12 at the time), nor would all young people facing a loss of liberty meet the legal criteria for placement there. The YJB target was therefore problematic, as beyond Hillside (until 2002 when Parc was opened) there was no other provision in Wales that could have made local-placing achievable and young people were inevitably 'exported' to England.

The nearest YOI to Wales was Ashfield (near Bristol), which opened in November 1999, with a capacity of 440 beds, and was the main establishment for boys from South Wales (until de-commissioned in 2013). There was no provision for girls (apart from Hillside). Boys from North Wales went to Stoke Heath YOI in Shropshire and later to Hindley YOI in Lancashire. In 2006 the Welsh juvenile custodial population was widely dispersed across 25 different custodial establishments and the proportion of young people being held more than 50 miles away from home had increased from 32% to 40% (between April and October 2006), which was attributed to the rising juvenile custodial population (House of Commons Welsh Affairs Committee 2007). This fell well short of the YJB's target for less distant placing.

From a WG perspective, the lack of provision in Wales disadvantaged young people culturally and linguistically, hindered their ability to access the Welsh education curriculum

and presented difficulties in maintaining family and community links (WAG 2007a; NAW 2000 and 2010a). It prevented them from accessing their entitlements in the same way that a community-based, Welsh-resident child would be able to (WAG/YJB 2004). From the outset the YJB wanted young people from Wales to be 'held closer to home' (YJB 1999:38). In 2001 one of its priorities was to achieve a 'better match between demand and local provision' in Wales (YJB 2001:25). The AWYOS echoed these views and stated that developing custodial places in Wales needed to be achieved 'as soon as possible', indicating priority and urgency (WAG/YJB 2004:2). The primary objective was to provide custodial facilities in Wales for Welsh young people (NAW 2000 and 2010a). Policy development focused on what the provision should look like and where it should be located. The WG had a preference for small local community based units along the lines of a SCH, rather than placement in larger YOIs further afield (NAW 2010a; Morgan 2010) and there was sustained lobbying of the YJB to this effect (NAW 2009c):

We think that children in the secure estate, whether in England or Wales, should be placed in smaller establishments close to their families and home communities, so that they can maintain regular contact with them (ibid: Para 10)

Hillside is the model we wish to consider. It is certainly the model we have discussed with the Youth Justice Board with regard to trying to bring facilities to north Wales (ibid: Para 15).

9.4 Jail in Wales?

The WG and YJB set up the Wales Juvenile Secure Forum in May 2004 (which carried on until 2008), to examine what to do about the placement of Welsh children/young people. It considered provision for Wales generally and for North Wales specifically. As custodial numbers decreased, policy changed and focused on developing tailor-made custodial provision for Welsh children/young people (in England as well as Wales) and then later on to improving resettlement planning and outcomes (see section 9.8).

Whilst the development of a small secure unit was the WG's preferred option, it was also something they were prepared to compromise on, to obtain additional custodial places in South Wales. Discussions took place in 2003 with the YJB about the establishment of a 80/100 bed STC in South Wales, which would assist in meeting the aim of placing young people within 50 miles of their home area and address the shortage of secure juvenile accommodation in Wales (Children and Young People Now 2003). The WG supported this

development, despite the 1995 Concluding Observations from the UN Committee raising concerns about STCs, which it might have been anticipated would have been in conflict with WG policy. This was centred on them being privately run establishments subject to prison regulations and not the welfare standards that would apply to a SCH, so there were doubts about their suitability for young and vulnerable children (they were originally designed for 12-14 year olds). Ultimately the STC did not go ahead because the YJB did not obtain the necessary funding (WalesOnline 2005).

The position appeared to be different in North Wales as the WG were prepared to provide the capital costs⁶² of building a SCH-type of provision there (NAW 2009c):

The Minister and Assembly Government have gone beyond that arrangement [a reference to the YJB's statutory responsibility for commissioning secure accommodation in Wales] by offering to fund the capital cost of expanding secure provision in Wales, in order to persuade the YJB to deliver the types of models of secure accommodation that we want to see in Wales (ibid: Para 19).

However, the WG were not prepared to fund the running costs, because they would have no control over placement decisions and could end up funding children from England (ibid: Para 21). Ultimately the plans did not come to fruition because the MoJ did not make resources available to the YJB, as a letter from David Hanson, when Minister of State indicated (NAW 2009e):

The Welsh Assembly Government has been in discussion with the YJB about the possibility of developing under-18 secure accommodation in North Wales. The YJB has made it clear that any such development would be contingent on them receiving the necessary funding which is not available at present.

Further, the question of whether there would be sufficient supply of young people for an establishment in North Wales had been raised, even though placement in England was regarded as problematic (NAW 2009b):

There is discussion now about a North Wales facility, which looks likely to be a secure children's home, if it ever happens. However, are there enough vulnerable young people who would meet the Youth Justice Board's standards of vulnerability to

fill a secure children's home in North Wales? (ibid: Para 109).

Culture and language are frequently batted around as the reasons for establishing such a home, but the number in north Wales that end up receiving custodial sentences are very small. However, the consequences for them in relation to culture and language are dreadful, because they end up in the north-east or north-west of England (ibid: Para 100).

As the vision of creating small localised units proved to be difficult to achieve, another option, which ran in parallel to the North Wales discussions was to utilise HMP Parc, a privately run prison in South Wales. In April 2002, a juvenile unit opened, with 28 beds for 15 to 17 year old boys, which has been expanded twice to its current level of 64 beds⁶³. There was initial criticism of this decision as the juvenile unit is located in one of the largest adult prisons in Europe (it has over 1,400 occupants) and was regarded as less suitable for young people than Ashfield YOI (in Bristol), where specific provision had been developed for Welsh boys (Morgan 2009). However, Parc has subsequently been commended for the quality of the relationship its staff have with the young people, which is attributed to the small size of the juvenile unit (House of Commons Justice Committee 2013). In fact, the House of Commons review of youth justice recommended the secure estate should be reconfigured in the future, into small units with a high staff ratio, which the UKG said it would take into account in reviewing responses to the *Transforming Youth Custody* consultation (MoJ May 2013d). However, this policy was not taken forward, as plans for Secure Colleges revealed the first would be a 320-bed establishment in the East Midlands and further Colleges will be of a similar size (MoJ 2014a), that would 'enable the closure of some capacity' in the SCH, STC or YOI estate (MoJ 2014b:14). The implications for Wales were unclear, but in 2014, there was an excess of 20 places in the expected capacity of secure establishments in Wales (ibid:6), indicating the position would remain under review.

So, whilst the aim of maintaining (a greater proportion of) Welsh-resident young people in Wales was achieved, the compromise had been in the type of establishment in which they are held. The dilemma was evident; incarceration in Wales (irrespective of facility type) or incarceration in an establishment that best suits the needs of young people (that may or may not be in Wales). Some of the problems the YJB and WG were trying to resolve still remain

⁶² Morgan (2009) estimated the capital and revenue costs of creating a small SCH or STC would be in the region of £25/26 million per annum.

⁶³ It was expanded from 32 beds to 64 in 2007, partly as a result of the failure to fund the STC in South Wales.

as there is no custodial provision in Wales for girls other than Hillside SCH (the YJB decommissioned all places in YOIs for girls in 2013). Young people from the north or mid Wales who are placed in Hillside SCH (or Parc YOI) are as far away from home as those placed in England – the average journey is around 165 miles (from the mid-North Wales coast) and the travel time is four hours each way (see also Morgan 2009 for further discussion). The incarceration of children too far from home remains a problem and is likely to be exacerbated if the secure estate continues to contract. This is not a peculiarly Welsh problem, as the unacceptability of distant-placing is something the Chief Inspector of Prisons has also commented on (H M Inspectorate of Prisons 2010).

In 2013 there were 17 YJB beds at Hillside SCH, which when combined with the 64 in Parc YOI, made 81 beds available in Wales. The significant falls in the custodial population have progressively resulted in more young people being held in Wales. By February 2009 it was just over 50%, which the YJB attributed to the expansion of places in Parc YOI (NAW 2009d). In March 2013, there were 50 young people in custody in Wales (WG 2014), which was 38% less than the 81 commissioned places provides for.

The custodial catchment area for Parc YOI now includes the South-West of England. Prior to Ashfield's closure, 95% of the young people in Parc were from Wales but between January and October 2013, 56% of its population came from Wales and 44% from England, of which 72% came from the south-west of England (the remainder were from a variety of locations) (Parc YOI 2013). The Welsh position has therefore changed from being an 'exporter' of young people to England, to an 'importer' of children from England. Further, the number of YJB funded beds in Hillside SCH was reduced from 17 to 10 in April 2014, as part of the MoJ's progressive decommissioning of the secure estate. It is noteworthy that the YJB had excluded Hillside from previous rounds of reductions as it had wanted to preserve the number of beds available for Welsh children, in Wales.

9.5 A bespoke custodial specification for Welsh young people

There was a shift in policy that moved away from expanding provision, to meeting the needs of Welsh young people held in English institutions and improving resettlement support. Plans to develop an enhanced service specification for those held in custody in England (YJB 2011a) arose out of the decommissioning of Stoke Heath YOI and the commissioning of Hindley YOI (in 2011) as the designated establishment for boys from North Wales. This fitted with the YJB's strategy (at the time) of developing specialist provision within certain YOIs (YJB 2011b). The development of the 'enhanced service specification' and specialist

provision was intended to 'promote the welfare, educational, cultural and resettlement needs of Welsh young people' (YJB 2012a:23; YJ Bulletin 2011b). It was accompanied by a 'bespoke placement protocol' to ensure that young people sentenced to custody with a Welsh address would be directed to a group of establishments offering the most appropriate support to them (YJB 2012c). These were identified as Parc YOI, Hillside SCH and Hindley YOI. Welsh identity was therefore used to determine the location of the custodial placement. This was a pragmatic solution that would ensure the delivery of entitlements to most young Welsh people in the secure estate, which had been problematic because of the diversity of establishments used (NAW 2009f) and it being impracticable to make these arrangements in all custodial facilities.

9.6 An alternative approach

Given the children's rights focus in Wales, it is perhaps surprising the discourse has almost solely focused on the expansion of custodial provision, not on reducing the numbers in custody (WAG/YJB 2009) and barely at all on promoting alternatives to it. High usage has traditionally been associated with neo-liberalism (Cavadino and Dignan 2006) and it might have been assumed that the welfare orientation in Wales, would have given these other issues more prominence. This has been noted by some commentators, for example Drakeford (2010:151) suggested the custodial debate in Wales should not simply be a matter of 'business as usual' about placement decisions or the most appropriate geographical location, but should also include the minimisation of the use of custody. Similarly, Howard Williamson suggested 'we need to think very carefully not about the custody strategy for Wales, but about a robust community strategy for Wales' (NAW 2009b: para 110). That said, the WG have the resource of the Youth Crime Prevention Fund and has made clear, in its 2010/11 and 2011/12 guidance on funding criteria, that YOTs can consider 'projects which offer non-custodial solutions'. However, it is not known what the take-up of this particular option was.

The YJB has in the past indicated there was potential for the WG to sponsor intensive fostering schemes in Wales (in the same way that the DCSF had done in England) and advocated for a national roll-out across England and Wales based on encouraging evaluation results (NAW 2009b:para 68). However, this option was not pursued; whether because as with other initiatives numerical thresholds could not be reached, or the geography of Wales and dispersed populations would have made it difficult to deliver. Morgan (2009) suggested that if those areas of Wales with the highest rates of custody and those with average rates of custody took a more judicious and systematic approach to its

management, decreases could have been achieved that would have negated the need for custodial expansion. However he counselled that 'all parties in Wales' would need to be committed to the UNCRC to make this a reality (ibid: 77). Actions identified in the AWYOS Delivery Plan went some way, with investigations into high custodial usage taking place in Bridgend and Merthyr Tydfil (Nacro Cymru 2011a and 2011b). However, the need for this type of focused investigation diminished, as the carceral population progressively decreased.

'Welsh custody for Welsh children' was a key issue for a considerable period, with carceral policy in Wales, until 2008 largely focusing on obtaining additional custodial places to avoid children being sent to England. It encompassed discussions about WG preferences, what type of provision was required and where and plans to ensure Welsh-resident children were placed in an establishment that best meet their cultural needs. Throughout the period the YJB took cognisance of the Welsh agenda and responded to it by maintaining a stable number of beds in Hillside SCH, increasing the number of beds in Parc YOI and introducing cultural programmes in Hindley YOI for Welsh young people. The position changed from 2009 onwards, as the diminishing Welsh custodial cohort largely resolved many of these problems. Financial cut-backs made the prospect of an additional SCH in North Wales unrealistic, particularly as in the subsequent years the YJB progressively decommissioned secure beds. Statistics from the MoJ indicate since 2009, the rate of decommissioning has been 33% of YOI beds, 24% of SCH beds and 2% of STCs and that 979 places were decommissioned in this period (MoJ 2014a).

On a final note, whilst the UKG has introduced legislation to raise the threshold for a remand in custody, there has been no equivalent change to limit custodial sentencing. Canada has for example, introduced statutory thresholds to reduce the use of custody for non-violent offences, which led to a 40% reduction in its overall use (House of Commons Justice Committee 2013). The UKG indicated this approach would be 'too prescriptive and may place the public at significant risk' (MoJ 2013g: 11). While there are still grounds to change the threshold, the custodial reductions across England and Wales have been more rapid than in Canada, without the need for legislative change or compromising public safety.

9.7 Practitioner attitudes towards the use of custody

This section explores the attitude of practitioners in the four fieldwork sites to custody, whether and to what extent practice was developed to minimise its use and any differences between England and Wales in this respect. The attitude of the YOT manager was influential in the team's approach to the use of custody (as in other areas as chapter six had identified). In England A there had been a concerted effort to minimise it (see also page 77), and the YOT managers in Wales A and in England B instructed their teams to promote community alternatives:

Our manager directs that we do not propose custody. If we think the risk is too great and we cannot offer something to manage that risk we might. We have only ever done it once and said we cannot work with this young person at this stage of their life (WAP7).

One of the reasons I came into this area of work is that locking up children is one of the worse things that you can do – I have always been anti-custody. My principal aim is to keep them out despite themselves. We would never recommend it, that is a judicial decision; we will give them [the court] all the options and will never say that we can't work with them [the young person] or we won't (EBP12).

The position in Wales B was different as the YOT had one of the lowest levels of custodial sentencing in England and Wales and because of this there was less comment about it:

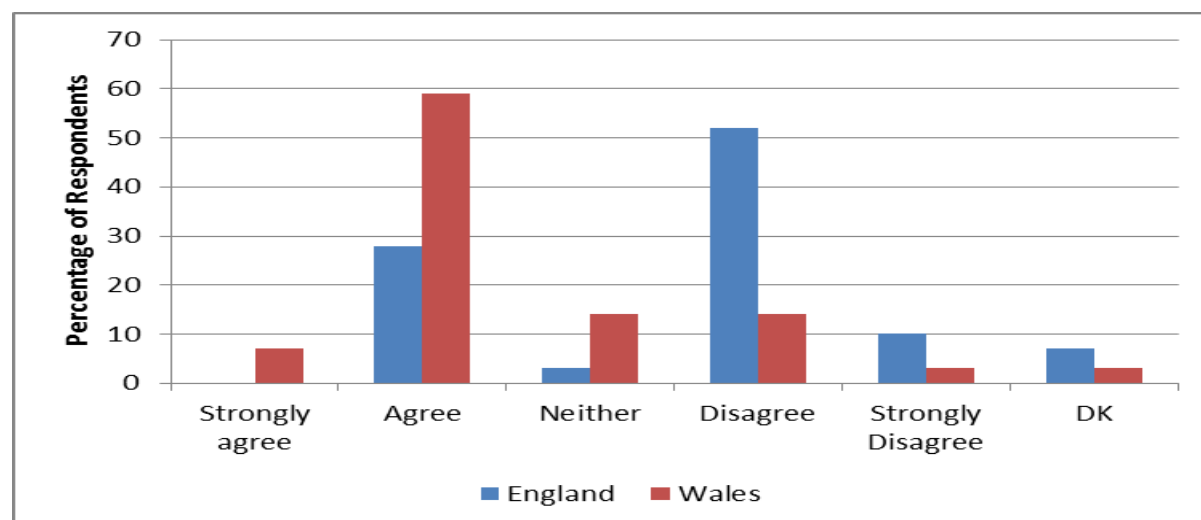
I have only ever had one young person in custody and that was in secure children's home and not a young offender institution, so I don't really know (WBP4).

9.6.1 Custody as a negative experience

As it was claimed there was an anti-custody ethos in the YOTs, it was of interest to explore this further. Figure 9.7 indicates there was greater agreement in Wales (66% of respondents) than in England (28%) that custody was a negative experience for young people. The difference between the countries was because respondents from England A largely disagreed with this, which is somewhat surprising given the YOT manager's aim of re-focusing practice because of concerns about high custodial sentencing levels. The response from England A might be due to how the question was interpreted and answered, or it may reflect there were more diverse views on the subject, some of which are in tension with 'acting in the best interests'. If custody is regarded to be a positive experience, it could

impact on the way in which practitioners behave towards young people and whether they would put forward constructive community-based alternatives in court reports, if they believed custody could have a beneficial effect. When England A is disaggregated from the other YOTs, 25.5% of Welsh respondents considered it was negative compared to 28.5% of the English respondents, which produced a lesser difference of opinion.

Figure 9.7 Percentage of respondents that considered custody is a negative experience for children and young people



The practitioners who did not think that custody was always a negative experience said this was because it made some young people feel safe and/or they liked the structure the custodial environment provided. Others believed custody could have a deterrent effect as it helped some young people to realise they needed to change their lifestyle. However, it is not clear whether these practitioners considered whether this outcome could have been achieved in any other way. There were also a number of responses, which revealed that some practitioners believed custody could be a good thing. For example, that the detention and training order could be a successful order (also noted by Souhami 2007) and short sentences could be a deterrent:

Some young people give the impression that prison is no big shakes and they don't care, but for others it's a very frightening experience. I had a young female on remand for three weeks and she decided after this that she would do anything rather than go back, so prison can work in some instances (EAP1).

Others thought that as custody removed young people from a 'spiral' of offending and substance misuse, by providing them with stability, a routine and the opportunity to learn (and improve their education), that it was too simplistic to think of it solely in negative terms:

We also have to recognise that some young people are almost on a self-destructive mission to end up there – the psychology of this is interesting – they end up in custody and only then can they turn themselves around. We can't tell them, they end up in custody and you think 'you idiot' (EAP2).

Each of the YOTs was asked to identify what actions had been taken to reduce custodial sentencing and whether there had been any impact. Three main themes emerged: the importance of influencing magistrates, promoting the use of community alternatives and adopting strategies to reduce the use of breach. Where comparisons are made, it is largely between Wales A, England A and England B because of the lack of custodial cases in Wales B.

9.6.2 Influencing magistrates

Each of the teams had strategies to develop relations with magistrates. These had the same features: regular meetings with magistrates to inform them about the work of the YOT, undertaking joint training and asking for feedback on PSRs, particularly when custodial sentences had been imposed, which can be effective in custodial minimisation (Bateman and Stanley 2002). Respondents in England A and England B stressed the actions were intended to 'educate' magistrates to think beyond custodial options and to demonstrate their YOTs could manage challenging young people in the community. These YOTs wanted magistrates to be confident about what the YOT could do and to develop relations so there could be constructive discussions about how to improve practice on both sides:

I think we have done a lot of important work with magistrates. When detention and training orders first came in they thought marvellous, they were banging them out left right and centre. We now have good alternatives to custody, the magistrates are confident in them and in the YOT and cultures have changed (EAP1)

Whilst Wales A did not go into the same level of detail as the two English YOTs about their practices, they took a similar approach and had a good relationship with the youth bench, which had a high degree of confidence in the reports the YOT presented to the court. Feedback from magistrates in England A had led the YOT to change its practice and

improve its PSRs, to focus less on highlighting problems without offering solutions, to taking a more positive approach:

The 'wash your hands' reports we might have written a few years go – little Johnny is a nightmare – we have done, this, this and this and none of it worked have stopped. There are kids that get locked up because it is such as negative report. We are now making the effort to ensure that these sorts of reports don't go to court and that we provide something more constructive (EAP14).

England B stressed the importance of writing realistic reports:

Our relationship with our magistrates is one factor. We are also a static, skilled team that write honest reports. We don't write reports to rescue kids. If magistrates go against our recommendations it is usually because we are going for another ISS⁶⁴ and the young person has had two or three in a year and they are just not going to give another, but they will tell us why (EBP11).

In Wales B, practitioners considered they were fortunate in having smaller caseloads, but the need to present credible alternatives to the court was just as relevant as in the other localities. However, their youth bench was regarded as welfare-focused and this contributed to lower custodial sentencing levels:

Unless you have done something very seriously wrong or have really hacked the magistrates off by never having complied with anything you said you would, you will not get sent to custody. The magistrates are more inclined to community alternatives, we are well engaged with them and they believe what we say we will do and trust us to do it (WBP6).

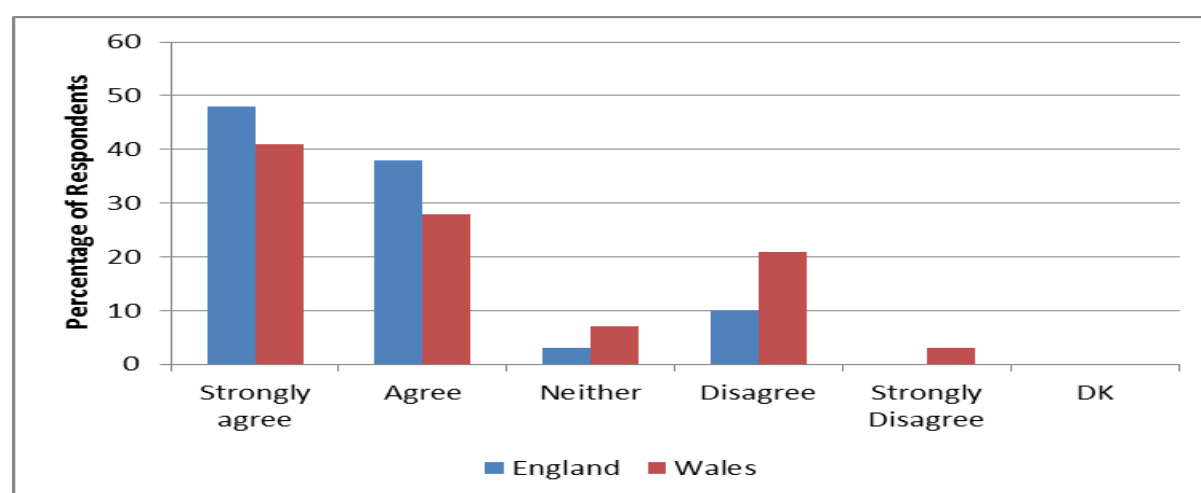
A 'children first' approach would try and minimise the use of custody and employ a variety of strategies to do so. Each of the YOTs wanted to reduce custodial use and took various approaches to try and achieve this. Practitioners in England A in particular, implemented a number of strategies to reduce the level of custodial sentencing in their area (see also chapter six), and even though their views about the effect of custody on young people were different to the other YOTs, the actions taken by all of the YOTs was similar.

⁶⁴ Intensive supervision and surveillance is a condition that can be attached to a youth rehabilitation order.

9.6.3 Promoting community alternatives

As one of the fundamental strategies in custodial minimisation is to promote the use of community sentences, practitioners were asked whether they believed community alternatives were always preferable to custodial sentences. Most indicated they were (see figure 9.8), although there was a difference in the rate of response between England (86%) and Wales (69%). This is interesting given the earlier finding that respondents from England A were much less inclined to consider custody to be a negative experience, which could have affected their attitude towards the use of community alternatives.

Figure 9.8: Percentage of practitioners that indicated community alternatives are always preferable to custodial options



Despite the difference in viewpoints (between the countries) the reasons given were broadly the same; that custody could be inevitable if a very serious crime had been committed, or if the young person posed a significant risk to others. This was then not a matter of preference, but a likely outcome. Respondents questioned the value of the use of custody unless it was for public protection purposes, did not think it was a deterrent for the 'average repeat offender' and that short term sentences were ineffective (although in response to the question of whether custody was always a negative experience, some had suggested that short sentences could be effective). Practitioners also felt that custodial environments (especially YOIs) did not offer the types of programmes that could improve the life chances of young people, particularly if they were released without accommodation or resettlement support, as there could be damaging consequences:

They come out of prison either clinically depressed or with more problems, so it can be counter-productive (EAP6).

These views indicate there is a strong likelihood that community alternatives would be promoted by the majority of practitioners (in both countries), but there were also some tensions, depending on the degree to which individual practitioners had an anti-custody ethos or not. More practitioners in Wales B disagreed that community alternatives were always preferable, which is of interest, as there was a high degree of agreement (in the team) that custody was generally a negative experience, which accorded with the YOT's welfare focus (see chapter six). However, when the interview feedback was examined there were a greater proportion of respondents in Wales B, by comparison with the other YOTs, who indicated the use of community alternatives would depend on the young person, the offence committed and that it could sometimes be the right response. The YOT has very low custodial usage and it is possible these views may have been influenced by a lack of direct experience. It is also noticeable that England A, which had a higher proportion of practitioners than the other YOTs who did not think custody was necessarily a negative experience for young people, had 87% of practitioners who agreed that community alternatives were preferable to custody. This might reflect that the practice direction of the YOT and the personal philosophies of some team members were at odds with each other. Chapter six had identified that changing the culture of the team had not been without its challenges.

Practitioners were asked what they thought had made a difference to custodial sentencing levels. They suggested there were more community options available and this had helped to prevent young people escalating through the system. They cited the addition of the 'intensive referral order' and the introduction of the youth rehabilitation order (YRO), which consolidated a number of community orders into a single sentence:

It's better than what we had before – that was a ladder irrespective of need. You were going to get your action plan order, then your supervision order and we would see you twice a week whether we needed to or not (EBP1).

The YRO gave practitioners more flexibility in designing community sentences, as it contained a menu of 18 options which included 'intensive supervision and surveillance', as a specific community alternative to custody. The options allowed practitioners to individualise community sentences more and to offer a variety of permutations to the court:

We can present what can look like a completely different court order - whether it actually is or is not (EBP5).

Practitioners also felt their practice had improved and they were more effective at keeping young people out of custody and linked this to the work they had done with magistrates:

In the last 10 years I have seen a difference with the courts and practitioners. When I speak to practitioners in other areas their young people seem to get custody much earlier than they would here. There has been awareness-raising about looking at young people holistically, about better assessment and really trying. Magistrates have a different attitude because they get better PSRs from us and a better service (WAP10).

For others it was linked to ethos:

In terms of custody – we would never recommend it – I can only think of two cases where we used the statement custody is inevitable and where with all our resources that we felt we could not manage that risk. We absolutely avoid trying to be in this situation and have an alternative in the most complex and extreme cases (EBP5)

The key issue is the will to keep young people out of custody and to effectively deploy the community options available. There was very little difference between the YOTs in England and in Wales in what they were trying to achieve, although individual practitioner's responses about the use of community alternatives suggested that variable practice also existed and ensuring consistent approaches to custodial practice was challenging.

9.6.4 Breach

A further element of custodial management is how orders are enforced and what actions the YOT will take if there is non-compliance. Compliance panels were first proposed in *Breaking The Cycle* (MoJ 2010a) as part of a wider strategy to prevent automatic escalation to custody and to encourage greater use of professional judgment in decision-making around non-compliance (see section 2.4.1). Three YOTs (in Wales A, England A and England B) had introduced panels and operated them in broadly similar ways: to explore whether the young person needed further help and support and to determine whether breach was the right course of action. Whilst Wales B did not mention compliance panels specifically, some of its practitioners took a similar approach, by examining young people's failures with a view to helping them, rather than seeking to enforce the order through the court, as a first step.

England A recognised it had previously been too punitive in punishing young people for missed appointments and returning them to court, where they would receive additional

penalties they could not cope with. Finding out why young people were not engaging and what the YOT could do to change this was part of a shift in the culture of the YOT (see section 6.3.1). Practitioners in England A and England B described using the panels in similar ways, but also with some differences. In England A breach action would only be taken when other options had been explored and exhausted. England B would only do this up to a point (using compliance panels after two breaches to prevent further failures), as they believed the YOT had to be mindful of its responsibilities to the court and this included breaching orders. Several practitioners in this YOT described breach as a 'positive tool' used to set boundaries around young people's behaviour:

We don't approach it from the point of view that he is such a damaged kid you can't lock him up. We breach kids as soon as necessary, we don't give them lots of chances or accept silly excuses, we say to them tell it to the judge. We will say to the court that we are using the breach as a way of getting this young person back on track and to demonstrate that we don't mess about (EBP11).

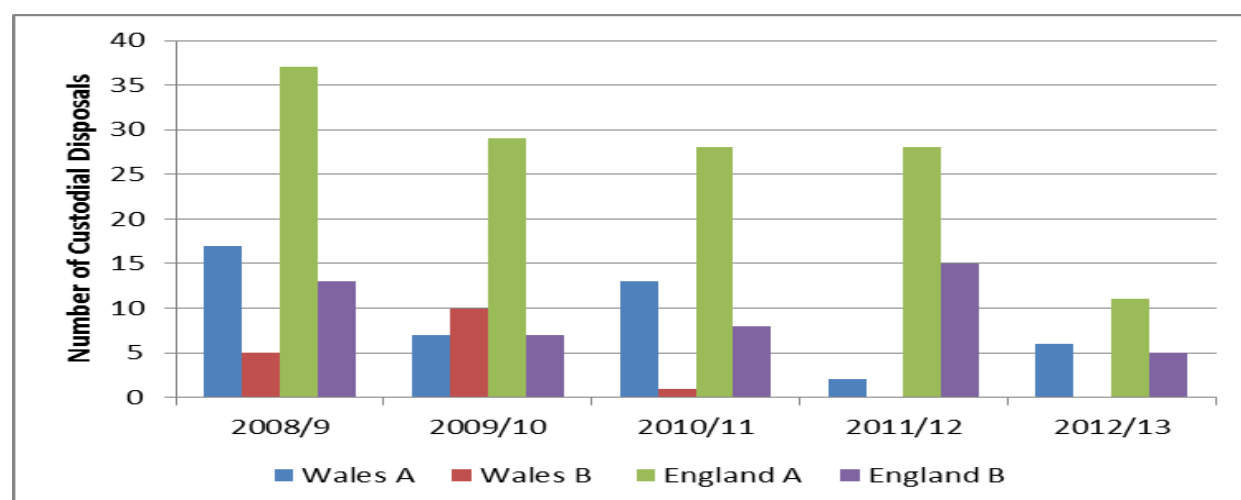
The above comment is of interest as the 'positive' element appears to be a welfare explanation for a punitive action. The YOTs used compliance panels, as they added an additional diversionary stage to the enforcement process and could prevent an automatic return to court and to custody. This is 'children first' in its intent. Some of the YOTs extended the use of discretion more than others, but there was a shift from following tightly prescribed processes to using professional judgement more to determine outcomes. The analysis does not demonstrate that YOTs in England were more risk-averse and therefore more likely to use breach than those in Wales, or that YOTs in Wales were more welfare-focused and therefore less likely to, as practice and the explanations for it were varied and nuanced at an individual level and team level. For example, England A and Wales B had a similar ethos towards the use of custody, but there were differences in their approach to report writing and breach.

9.6.5 The impact of custodial measures

The pattern of custodial usage was examined in the four YOTs to establish what progress they had made and any differences between the two countries. The point of measurement was taken from 2008/9 when the OBTJ target was dropped and entrants to the youth justice system started to fall, to 2012/13. All of the YOTs had experienced reductions; Wales B had not had any custodial sentences for the last two years (to March 2013) and in the other areas custodial disposals had reduced by 62% in England B, 65% in Wales A and 70% in England A (taken from YJB regionally reported data) (see figure 9.9).

This is of interest as all areas had reductions, despite some making a more concerted effort to reduce custody than others and there being some variations in approaches to PSR writing and breach. The extent to which custody would have fallen without these actions is difficult to judge as the overall trends indicated a downward trajectory since 2008/9 (see figure 9.1). However, with the biggest reduction occurring in England A, it suggests a focused effort can make a difference (as other studies have also found).

Figure 9.9: Number of custodial disposals in the four YOTs



Practitioners were asked if they were aware of the custodial trends in their locality. Not all knew that custody had fallen or felt they could comment, but where they did suggested it was mainly as a result of reduced numbers entering the criminal justice system, as well as improvements to their practice (although this was secondary in some instances). Several practitioners in Wales A mentioned local changes as a group of persistent offenders the YOT had worked with for some time had grown up, were no longer on their caseload and had not been replaced by an equally demanding cohort. Practitioners in England B considered their custodial levels were low because of the profile of the young people in their area and their semi-rural location: they did not experience the same level of serious offending as a nearby city:

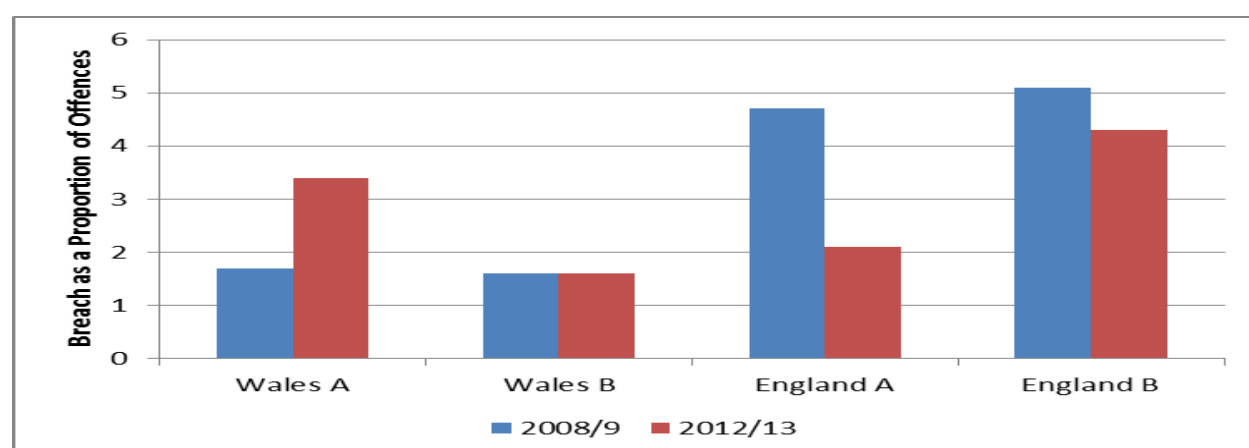
We don't have gang culture and the behaviours that can go with that e.g. sexual exploitation. We don't have major drug problems. Our kids get a big shock when they go to custody, they can think they are the big I am of [England B] and then wonder why they don't like it (EBP2).

Breach levels were also examined (figure 9.10). This shows that Wales B had a relatively static position, which is possibly because the YOT operates in a rural locality and mainly works with young people in their homes, which negates the need for them to travel to the YOT and by inference fail to attend appointments, so breach does not significantly feature as a criminal justice response (also mentioned on page 151):

Because we go to young people it could be argued there is less responsibility placed on them to comply with their order, than if you were making them come to you. It is less likely that you will fail your appointments (WBP6).

It could also indicate that the profile and therefore the caseload of the YOT was different, which might be associated with its rural location and crime profile. Also breach might be less common simply because of the smaller caseload size.

Figure 9.10: Breach as a percentage proportion of offences 2008/9 compared to 2012/13



England A and England B have had reductions which may relate to the impact of compliance panels, but Wales A is of interest as the breach rate increased despite its compliance panels. This YOT also experienced an increase in the number of offences that resulted in a disposal (from 112 to 147 in the period examined). This may be a reflection of a change in the cohort of young people they were dealing with, as practitioners reported they were supervising a higher proportion of more challenging and complex cases than was previously the case (see section 8.7), although they also mentioned a difficult cohort that were no longer part of the YOT's caseload (on the previous page). This contradictory information indicates that it is difficult to pinpoint exactly why rates of re-offending vary (as chapter five

also highlighted). Also, the complexity of the current cohort is something some of the other YOTs indicated they had experienced, so this is far from clear cut.

9.6.6 Summary

In overarching terms all of the YOTs appeared to have an anti-custody ethos, which is compatible with acting in the 'best interests' of children and young people and the UNCRC. However, there were some important differences in the way that practitioners thought about the use of custody and its impact on young people, despite three of the four YOT managers indicating that custodial minimisation was a priority. The fourth (Wales B) was not explicit about its aims, but its small caseload and virtually non-existent custodial population indicates it might simply not be a practice priority. Whilst some of these differences revealed variances in the thinking of practitioners in YOTs in England and in Wales, their responses were not consistent enough to suggest a clear cut division in opinion and approach, but rather individuals who had different viewpoints about the questions asked.

All of the YOTs employed a number of strategies to try and ensure that young people only received custodial sentences when warranted and their approaches were similar: influencing magistrates to impose community rather than custodial sentences, maintaining a constructive relationship with them, proposing viable community alternatives and not automatically breaching cases when there might be actions that could remedy failures to comply. Whether this arose from the strategies of the YJB in relation to court work, or from the YOT inspection programme, which up to 2009 examined court practice is difficult to determine. There were not fundamental differences between England and Wales in terms of approaches, but the philosophy of the YOT manager was important, as was how this was converted into practice.

However, there are also tensions as a number of practitioners who indicated custody should be avoided and community alternatives promoted, also considered imprisonment was not necessarily an adverse experience for some young people, despite the claims of an anti-custody ethos. The relevant issue is whether this would influence how they would approach cases where they believed there might be a beneficial effect from incarceration and whether the claimed anti-custody ethos would prevail. These issues have resonance with Bateman's (2013b) conclusions that the current generation of youth justice practitioners may not diligently oppose custodial use, as much as their predecessors did and Field (2006) that there could be a selective approach to report writing for courts, depending on how practitioners perceived the young person they were writing the report for. The extent to which this happens or not, may be due to how actions are gate-kept by operations managers

and the like. It is difficult to tell, but in some of the busier, more process-driven YOTs, where there is less focus on the individual, there might simply have been less concern in preventing custody (see section 6.3.4). This is less an issue about England and Wales and more about how the team is managed and what are seen as practice priorities.

9.8 Resettlement from custody

The final area to be examined is resettlement from custody. For comparative purposes figure 9.11 sets out the developments relating to resettlement in England and Wales from 2004 to 2014. Key activities include the creation of a national resettlement strategy by the YJB (YJB 2006b), the creation of a number of YOT-based initiatives with dedicated resettlement workers (e.g. Resettlement and Aftercare Provision (RAP) and Integrated Resettlement Support (IRS)) and the formation of consortia involving statutory and voluntary sector agencies. There have also been a number of other resettlement-related initiatives, some of which have been government-led and others that have not, such *Beyond Youth Custody* (England), which is funded by the Big Lottery. For reasons of space it is not possible to explore all of the initiatives, but the position from 2008 onwards has been examined as it reflects differences of approach between England and Wales.

Figure 9.11: Resettlement activity in England and Wales: timeline and activities

Year	England	Wales
2004	The YJB publishes the <i>Youth Resettlement Action Plan (England)</i> .	A supplement to the <i>Wales Reducing Re-Offending Action Plan</i> , was to be drafted in partnership with the NOMS, the WG and Nacro Cymru
2005	RAP launched by the YJB, in 59 YOTs in England. The RESET programme ran from 2005 to 2007, by the charity Rainer, in three London boroughs and four in East Manchester.	RAP operated in four YOTs in Wales: Cardiff, Newport, Rhondda Cynon Taff and Swansea.
2006	The YJB published <i>Youth Resettlement: A Framework for Action</i> , which set out its resettlement strategy.	An 'equivalent' arrangement would be made in Wales
2006	YOTs audited their resettlement activity as part of activity to reduce custody ⁶⁵	As England
2008	Youth Crime Action Plan was published and set out a number of strategies for resettlement.	
2009	RAP re-branded as IRS The YJB-funded six regional	Resettlement Support Panels were piloted in six YOTs between July 2009

⁶⁵ YJB Corporate and Business Plan 2005/6 to 2007/8

	<p>resettlement consortia until March 2012.</p> <p>Project Daedelus was launched in September in the Heron Unit of Feltham YOI and operated to May 2012. A resettlement broker was based in the establishment and assisted young people in accessing sustainable education, training or employment on release, as well as addressing any issues associated with their offending behaviour</p>	and March 2011
2011	The YJB-funded resettlement consortia continued to operate throughout this period.	The YJB hosted an event at Parc YOI to canvass opinion amongst the statutory and voluntary sector about establishing a resettlement consortium across Southern Wales.
2012	<i>Beyond Youth Custody</i> was established in 2012 to examine and promote effective resettlement practice and will run to 2017. It will draw on the experiences of 15 projects that deliver resettlement services to young people.	The Big Lottery did not fund an equivalent project in Wales.
2013	Some of the English resettlement consortiums remain e.g. in the South West	<p>A joint resettlement work programme is agreed between the YJB and WG and two regional resettlement projects are established;</p> <ul style="list-style-type: none"> - a Southern Wales resettlement consortium and the commissioning of a strategic resettlement brokerage project. - a North Wales brokerage project to support resettlement from Hindley YOI. - Resettlement checklist project
2014	UKG announces its plans for resettlement consortia situated around four high custody areas in England.	The WG consults on the establishment of Regional Reintegration and Resettlement Partnerships in a White Paper

The *Youth Crime Action Plan* in 2008 was pivotal in developments in resettlement. It identified a number of measures to strengthen resettlement activity; including expansion of RAP⁶⁶, providing more comprehensive packages of support to young people leaving custody, reinforcing the role of Children's Services in resettlement and placing a duty on local authorities to fund and commission education and training in juvenile custody. One of

⁶⁶ This was targeted at young people leaving custody, who had substance misuse problems and mental health needs. It was intended to reduce re-offending, address substance misuse problems and to tackle other needs and vulnerabilities (Galahad SMS Ltd: 2010).

the recurrent themes was about improving partnership working and collaborative activity. In order to do this the YJB was invited by the UKG to (H M Government 2008:61);

Develop a pilot which establishes a regional or sub-regional consortium to provide coordinated resettlement solutions to local authorities in a single area. This can potentially foster greater links between the secure estate and local authorities ensure the development of consistent approaches and make the best use of resources.

One of the problems associated with resettlement is the 'disconnect' between the services provided in custody and those required on release (Berelowitz and Hibbert 2011:54). There were some similarities and differences in the way the UKG and WG chose to address this. Six regional resettlement consortia were established and operated in England until 2012, with funding from the *Youth Crime Action Plan*⁶⁷. The consortia were established within 'a given custodial catchment area', the rationale being they '[the consortia] are more likely to meet the challenges posed by resettlement if they are working together with custodial providers', to provide better post-custodial support for young people living in those areas (YJB nd.e:10). There was initially no corresponding activity in Wales, apart from an indication that whatever approach Wales took, would be tailored to national circumstances (H M Government 2008:7):

The consultation on accountability arrangements and improving the resettlement of offenders will be taken forward jointly with the Welsh Department for Social Justice and Government and the wider Welsh Assembly. The Welsh Government will continue to implement its own strategy which shares many of the same aims and principles of the Action Plan but is tailored to the situation in Wales.

Wales initially choose not to develop consortia. In 2009, the relationship with the WG proved to be important as it funded six pilot Resettlement Support Panels (RSPs) in YOTs in Wales (YJB 2011c). RSPs were multi-agency panels based on the YISP model (used for prevention cases), which brought agencies together with the YOT to identify how young people's needs would be met and to share accountability for delivering services (WG/YJB n.d.a). The evaluation of the RSPs indicated they improved outcomes for young people (e.g. fewer breaches of orders/licences) and increased collaborative working amongst the participating agencies. By 2011/12 YJB Cymru was encouraging every YOT in Wales to develop post-sentence resettlement programmes (YJB 2011a).

⁶⁷ £100 million over two and a half years.

Despite the apparent success of the RSP as a model, there was a change of direction that resulted in the formation of a Southern-Wales wide resettlement consortium, thereby moving resettlement planning from individual YOTs to the wider catchment area of Parc YOI and Hillside SCH in Southern Wales (YJB 2012a). In contrast to the English consortia which focused solely on young people resettling from custody (see for example Wright et al, 2012), the Welsh consortium would target young people remanded or sentenced to custody and those serving 'high-end community sentences at risk of custody if their offending behaviour continues' (YJB 2012a:25). The difference in Wales was likely to be because a project solely aimed at young people in custody would not be viable because of the reducing custodial population. By 2013 the resettlement activity in Wales was consolidated into a shared work programme between YJB Cymru and the WG (YJB 2013b:25) to:

'ensure that all work streams were supported by a coherent framework and joint governance arrangements that were aligned to UK and Welsh Government policy'.

At the core of the work programme were two resettlement broker projects; one in south Wales to support the development of the Southern Wales Resettlement Consortium and one in North Wales to support resettlement activity from Hindley YOI in Lancashire.

In 2014 the UKG and WG issued their respective plans for resettlement. The UKG's plan was part of its *Transforming Youth Custody* programme, (see also page 16). The resettlement elements included improving access to suitable, supported accommodation, to education, training and employment and establishing two regional employer forums to assist young people into suitable opportunities (YJ Bulletin 2014; MoJ 2014b). However, the MoJ also recognised that holding statutory partners to account for the services they should deliver was problematic (MoJ 2014a:12):

Co-ordinating all the different elements of successful resettlement is the role of the YOT. Many YOTs are doing an excellent job working with local partners to tackle reoffending. However, there is a need to put robust mechanisms in place to hold local partners to account for fulfilling their statutory obligations in relation to young people leaving custody

The UKG's response to this was to 'expand and refine' the resettlement consortium approach (ibid: 12). Four resettlement consortiums would be set up in high custody areas as opposed to around particular secure establishments and would receive £250,000 each to assist them to develop (MoJ 2014b). There were no corresponding plans for Wales; possibly

because its youth custody population had fallen to around 50 young people by that time and the approach remained that of delivering the broker projects.

Whilst the UKG's approach was to hold agencies to account through partnership working, the WG's chose to consult on legislative proposals to place a duty on local authorities and health boards to provide the requisite support. This arose from responses to its Green Paper consultation in 2013 (see section 4.6), recommending that co-operation, collaboration and resettlement planning between key agencies should be improved (WG 2013a). A later White Paper set out proposals for the establishment of Regional Reintegration and Resettlement Partnerships (RRRPs), which would take responsibility for young people in custody, resettlement and those defined as prolific offenders (WG 2014). The RRRPs shared some features of the consortia approach as they would be multi-agency in composition, but appeared to shift the YOTs' co-ordinating responsibilities onto local authorities and health boards. The White Paper also proposed that voluntary support should be available to young people as part of their resettlement package and each RRRP would be supported by a reintegration and resettlement broker.

The WG's White Paper proposal bears some similarity to the *Youth Crime Action Plan 2008*, as both documents make reference to young people having the support of a designated 'lead professional' throughout the resettlement process (WG 2014:13; HM Government 2008:59). The documents also discuss the development of a 'pathway plan', which the *Youth Crime Action Plan* intended would be akin to a care plan for a looked after child (H M Government 2008:59). In Wales it would be a 'plan for reintegration and resettlement', delivered by those with statutory responsibilities (WG 2014: 8). The Office for the Children's Commissioner in England recommended there should be a statutory duty on local authorities to provide support and services to children/young people leaving custody, over and above what is dictated by criminal justice statute, and comparable to that for children leaving care under the Children (Leaving Care) Act 2000 (Berelowitz and Hibbert 2011). The WG's proposals were moving in this direction.

Over the last 10 years, the approach to resettlement has followed the strategy of bringing agencies together to support young people leaving custody. The UKG and WG had the same common aim of trying to find ways of holding statutory services to account to deliver more effective resettlement arrangements for young people and in Wales to deliver 'parallel and equivalent' activities to that of England. Ultimately the legislative proposals did not go forward in Wales, because the Silk Commission recommended that youth justice be devolved, so the legislative programme was withdrawn. It is therefore not possible to assess

which of the methodologies would have been the most effective strategy. However, the WG has supported the YJB's aims of improving resettlement outcomes, strategically and financially, which has been significant for its development in Wales.

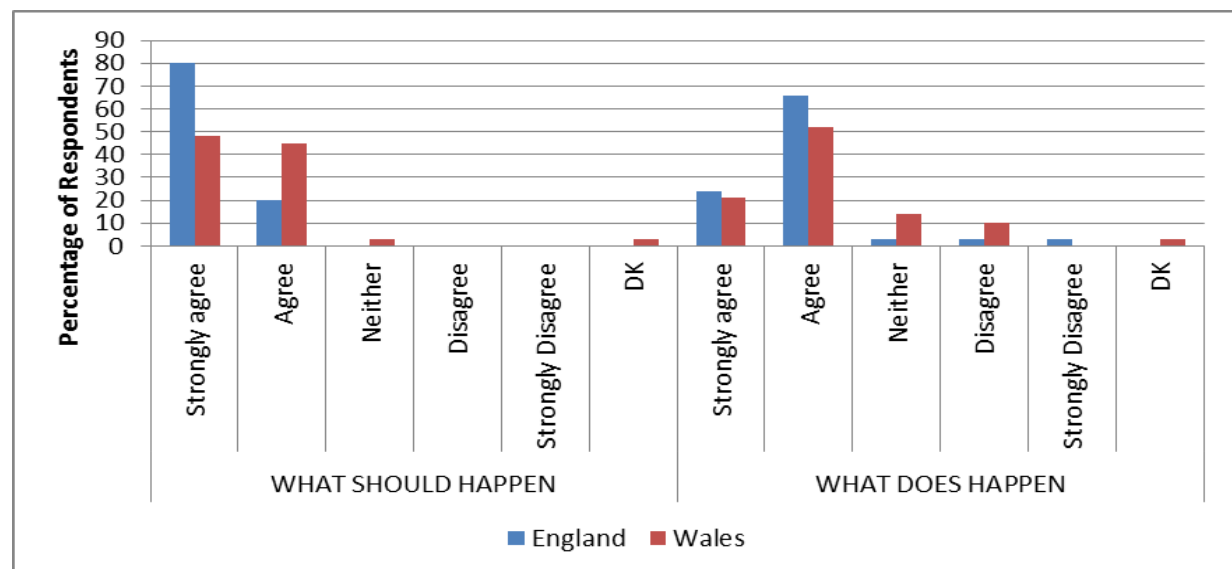
Chapter Ten

Children First, Rights and Risks

10.1 Introduction

The policies of the WG towards children and young people are underpinned by the UNCRC (see chapter two) so this raised the question of whether rights feature more prominently in practice in Wales, than in England. This penultimate chapter investigates whether they influence what practitioners do and their understanding of what a ‘children first’ orientated service is. This is contrasted with views about Asset, risk-led practice and *National Standards*. Figure 10.1 indicates that respondents in both countries agreed that children’s rights should have priority in practice, with a marginally higher proportion in Wales (93%), than in England (90%) indicating this should be the case. Practitioners in England more strongly agreed that children’s rights should be prioritised, than those in Wales.

Figure 10.1 Practitioners views about whether children's rights are given priority in youth justice practice



When questioned about whether this is what happened, the majority of practitioners agreed that rights were prioritised, but there was a greater differential between the countries: 90% of respondents in England (strongly) agreed this was the case, compared to 73% of respondents from Wales. More practitioners in Wales provided either a neutral response or disagreed about what happened. Despite this difference, there were a small number of practitioners who had worked in both countries (in Wales A and Wales B), who felt there was more awareness of children’s rights in Wales than in England:

I don't recall children's rights ever being discussed in England YOTs. From my experience there is more evidence of it in Wales. There is a level of awareness even if it's not interpreted in practice as such (WBP11).

Where there was disagreement about the priority given to children's rights (in table 10.1), it was because process took precedence over principles, statutory orders made rights-based practice difficult to deliver and there needed to be a better understanding of how to deliver rights-orientated practice. Nonetheless, practitioners in England and in Wales demonstrated a solid commitment to upholding children's rights, although this appeared to be stronger in England than in Wales, which is of interest given the emphasis that has been placed on Wales being rights-focused in academic literature (such as Muncie 2011), although this commentary has been more about policy than practice.

10.2 Understanding of the UNCRC

If the basis of children's rights practice is understood to derive from the UNCRC, it was surprising to find that two practitioners had never heard of the Convention – one from England and the other from Wales. Moreover, while other respondents were aware of it, there was limited knowledge of its contents and it was regarded as remote from practice:

I am aware of the UNCRC and personally am in favour of it. However politically it's also window dressing. It's like child poverty; it's hard to see what is being achieved (WBP8).

One of the problems was that practitioners did not comprehend how the UNCRC or its articles related to what they did on a day-to-day basis and therefore questioned its utility:

Practitioners simply don't understand rights and what they are couched at. There is a gap between the idealistic aspirations of the UNCRC and how you might deliver it on the ground (EAP13).

If you asked me what rights-based practice looked like I would give you a blank stare and ask you to ask me an easier question (WAP6).

Others suggested that practitioners did not spend their time thinking about whether or not they were meeting the Convention's standards, nor did they characterise the way in which they worked, as rights-based. They were more inclined to talk about doing the 'right thing':

When you are working with young people it's hard to keep thinking about policy and you don't think am I taking a children's' rights approach today? But we do think about whether we are doing the right thing by young person (WBP12).

In spite of practitioners not understanding how the UNCRC might apply to practice, they frequently referred to children's 'best interests' as important, without necessarily recognising where this came from (article three of the UNCRC). This may be because it is training, personal beliefs and culture rather than policy that determines practice. For example, the Children Acts 1989 and 2004, which contain rights-based principles, are embedded in social work training, in a way the Convention is not. This legislation and accompanying guidance and regulations helps practitioners to interpret what they need to do.

Academic and policy commentary on the UNCRC tends to focus on systemic issues such as diverting young people from the criminal justice system and minimising the use of custody. These approaches drew barely any comments from respondents (whether in England or in Wales), when talking specifically about rights-based practice. Chapters eight and nine indicated there was philosophical agreement with these principles and identified some of the actions taken to support their implementation, although they were not necessarily recognised as rights-focused by those concerned. Some practitioners indicated they did not look for influences beyond what their service required them to do or what they had learned from experience or training, so the UNCRC did not feature in their landscape (or indeed the AWYOS for practitioners in Wales, as outlined in chapter six). The one area of the UNCRC that some practitioners understood was connected to the Convention was 'participation' (article 12), which is discussed further on.

Practitioners in Wales who were aware of the WG's rights-based agenda, questioned whether there was more the WG could do to help them to incorporate the UNCRC into their day-to-day activities. One of the criticisms of promotion of the Convention (by those that had received training) was that it tended to describe the articles contained in the UNCRC, but did not assist practitioners to understand how they could be converted into practice. This sentiment resonates with findings outlined in chapter six that practitioners are primarily concerned with what they can use in their engagement with young people. Material that is not directly beneficial or pertinent to day-to-day practice accordingly generates little interest or is regarded as having limited relevance. If materials do not provide practitioners with what they want, they may ignore them or be disinterested:

I could tell you loads about the young people I am working with and what I am doing – the policy stuff is of less interest – I am concerned how I can get a young person through their bail or their order – all this other stuff exists, but most of it is neither here nor there to me on a day-to-day basis (EBP10).

When comparing the views of practitioners expressed in figure 10.1, there is a tension with what followed in the interview analysis. This indicated that practitioners did not think about rights in term of links to the UNCRC, hence the comments about relevance and utility, which makes it problematic to suggest that practice in Wales, is derived directly from the UNCRC. Another issue raised from the interviews was whether rights-based work could realistically be incorporated into the existing UKG-led youth justice framework:

A rights-based approach does not exist in England so how does the YJB incorporate this into their work in Wales? I have not seen anything to date [that suggests it has].
(WAP2)

This suggests that one of the challenges for the WG (and YJB Cymru) is not only how awareness of the *AWYOS* (or any subsequent joint strategy) can be effectively raised within youth justice (because of low practitioner awareness of its content – see section 6.5), but how rights can be fully accommodated in the risk-orientated UKG youth justice system. The Children's Commissioner for Wales has commented that one of the weaknesses in the implementation of the *AWYOS* is that it failed to provide any of the detail of how rights-based could be developed and that more direction and focus was needed to reduce the gap between policy (aspiration) and practice (NAW 2009a), which this analysis also confirms.

10.2.1 Young people's entitlements to services

The most relevant articles of the UNCRC that relate to practice include acting in the 'best interests' of the child (recognising they have different needs from adults), diversion from prosecution, using custody as a last resort and young people having the right to be heard in decisions that affect them (otherwise known as participation). Whilst it might have been anticipated that practitioners would have referred to these issues, most of the commentary about rights was about connecting young people to mainstream services and to a much lesser degree about these other areas, although they were not entirely ignored. For example, two practitioners (in England) made reference to the legal anomaly of detaining 17 year olds in police custody (post charge), rather than transferring them to local authority accommodation, (a matter the UKG has now addressed). Others drew attention to the different perceptions of rights:

I was recently talking to a solicitor about a young person who was being sentenced for a sexual offence. I told him we had shared information with the college about some of this because of a potential risk to others. The solicitor did not necessarily agree. That was the first time that I felt our information sharing regarding child protection had been challenged. It's made me think about the young person's rights to privacy and whether we had breached them (EBP9).

As rights mean different things to different agencies and individuals, this is relevant because of the multi-agency composition of the YOT. For example, whilst the police have to comply with human rights, the UNCRC did not fit within the policing perspective:

I could ask any police officer about the ten entitlements⁶⁸ and they would not know what I was talking about. It's because they don't need to; they catch and convict. None of this fits in Home Office guidance, so it's not really on our radar (WBP1).

Respondents from CAMHS indicated their primary concern was to obtain consent to treatment from the young person (and their parents). For other YOT practitioners, rights-based practice generally meant signposting young people to services that could assist them (this was common to England and Wales). The importance of the practitioner as an advocate who helps young people to gain admittance to services, as well as challenging exclusion or discrimination was regarded as an intrinsic part of the job and features in other chapters of this study (notably chapter seven). In the context of this discussion, the role of the practitioner-advocate was important as all YOTs encountered young people who were unaware of their rights or did not feel empowered to make decisions for themselves:

We make them aware of what their rights are – as a group they tend not to be. For example we will strongly advocate for their right to education and make them aware of that right (WAP9).

The delivery of a rights-based approach was strongly connected to concern for young people's well-being and ensuring that welfare needs were met:

I think welfare and children's rights are intertwined. For example we look at safeguarding because we know there are things that are not good enough in a young person's life and they have a right to expect better from education or their home

⁶⁸ See footnote five, page 21 for a summary of the ten entitlements

environment. So the welfare aspects drive the core belief that these children deserve a better set of life conditions, it at the heart of what you aspire to do (WAP4)

Some practitioners in Wales spoke of the right to services in the language of WG policy; *Extending Entitlement* (NAW 2000) and in particular the ten entitlements all children/young people in Wales should receive. When referred to, the ten entitlements were tangible, specific and could be understood in concrete practice terms, so had more day-to-day applicability than the UNCRC:

If we look at the ten entitlements and young people do not have them – there is generally a problem. When we are looking for positives with young people we will look at whether they are accessing their entitlements. A lot of the work is based around them. (WBP4)

The concept of entitlement to services is specific to Wales and is derived from the UNCRC's principles of non-discrimination and of ensuring that children in trouble with the law receive the same treatment as non-offenders (see section 2.6.2). However, when practitioners in England talked about accessing rights meaning admittance to services, it amounted to the same thing, despite the different policy context. It was also clear that opinions in Wales differed as much as opinions did in England about right-based practice, with the most consistent feature (in both countries) being that young people should be able to access the services and support they needed, irrespective of their status in the criminal justice system. This suggests a rather more complex picture about how rights are understood and incorporated into practice, which is not a straightforward matter of derivation from the UNCRC.

10.2.2 Participation and article 12 of the UNCRC

Practitioners in three of the four YOTs discussed 'participation' (except for England B). Practitioners in the Welsh YOTs identified this originated from the UNCRC (article 12). In England A, the impetus came from the YOT being co-located with the Youth Service, rather than from an awareness of, or commitment to, the UNCRC:

I don't think it's about the UNCRC, that has informed the Youth Service and that has in turn has informed the YOT, but there was not a direct connection from UNCRC to us (EAP14).

The development of 'participation' as it is generically known has become something of a growth industry in work with children and young people. For example the National Youth Agency in England promoted youth 'Voice and Engagement' and developed young people's participation standards⁶⁹ and the WG set up a 'participation' work programme largely delivered by Save the Children in Wales⁷⁰ (Save the Children 2013). The development of 'participation' can mean different things to different people: for some it is about empowering young people to become more involved in the design and delivery of the services they are in receipt of, and for others it is about involving young people in youth councils or other activities such as staff recruitment (Nacro Cymru 2009b).

Three of the four YOTs had examined how they could develop more participatory ways of working, the main objective being (in all instances) to involve young people more in providing feedback on what worked for them in the planning and delivery of their orders, the overall service they received from the YOT and to develop practice to support this. England B had not developed any specific initiatives and talked about participation in terms of what practitioners did on a day-to-day basis rather than something they aspired to do:

The young person has a right to choice, a home, to be heard and options, so the rights of the child are considered in our work. We ask young people what works for them and take their feedback so that we can ensure that we are delivering a service in their best interests (EBP6)

In Wales A and England A, 'participation' was a practice priority determined by the YOT manager:

[We] have tried to get participation off the ground. The manager sent us on different things (training) to do with participation and we are slowly introducing different things and more conciously involving young people (WAP8).

England A had previously set up youth advisory groups, which had not worked well and been regarded as tokenistic. The current aim was to utilise the expertise of the Youth Service to develop something more meaningful. The interest in developing participatory practice in Wales B came from within the team and was not a 'top-down' approach. Some (but not all) practitioners wanted to develop practice that involved consulting with young

⁶⁹ Known as Hear by Right

⁷⁰ This also included the development of participation standards known as Having a Voice, Having a Choice.

people on a number of issues to promote engagement with them and their families. This was regarded as compatible with other inclusive practices used by the YOT, notably motivational interviewing, solution-focused therapy and restorative approaches.

However, participation as a concept was difficult for some practitioners to identify with (in both countries), as there was a degree of doubt about what could be achieved. Some felt it was 'reinventing the wheel', that it was an unnecessary add-on to the core role, that the notion of 'Voice and Engagement' was 'too woolly'; others wanted to practice as they saw fit. For some, engaging young people was what they did, but they did not label it as 'participation', so questioned the need to specifically focus on it or to regard it as a 'new' area of practice or even consider it as a rights-based approach. Others suggested the extent to which inclusive approaches were taken or would be developed would depend on the views of the individual workers:

There are different perspectives on what we do with young people. I feel young people should have a say and will ask their opinion, whereas other colleagues will simply have a plan and go through it and provide limited opportunity for comment and [they] have to get on with what they are given (EAP11)

Those practitioners that were amenable to 'participation' felt it had the potential to involve young people in a wider range of activities:

If you had talked to the team about this a few years ago they would not have been that interested, but now they are more receptive. We have young people involved with the Howard League – U R Boss (EAP2)

However, there was more questioning of the approach than not (in Wales and in England), with uncertainty about whether practice could be genuinely participatory, because the criminal justice system constrained choice. There was some scope for young people to negotiate around elements of their supervision plans, but there were also limitations and tensions:

If you took this to the ultimate degree the intervention plan should be written by the young person, but putting up a UNCRC poster is difficult, because it says you have a choice and clearly they do not and we don't want to give the young person the wrong impression. It may have the opposite effect and they may think they don't have to engage (WBP6).

For others, there was doubt about whether participatory practice gave young people any more 'power' (and was therefore worth pursuing), as professional opinion sometimes had to prevail:

Sometimes you have to over-ride their voice with your duty to protect their welfare. If someone is prostituting themselves and they say they are ok with that, I can't ignore it when I plan for her (EBP5).

Further, other practitioners suggested that sometimes what young people were being asked to do, such as to join a youth council was too far removed from their daily lives to be meaningful, their inability to conduct themselves properly would mean probable exclusion and it was questioned whether a young person in crisis could realistically think about rights when facing other difficulties.

In conclusion, the attitude of many respondents towards 'participation' indicated that whilst it was a worthy aspiration, it was difficult to conceptualise how it could work in a criminal justice context and there was by no means a clear acceptance (in either England or Wales) that it was an area of practice that should be developed, despite the varied efforts to do so:

It's about what is believable to practitioners. Is it part of their ethos or not, do they buy into the Convention or not? Does it mean anything on a day to day basis or not – how can they operationalise it in practice? (WBP2)

10.3 Characterising children first and offenders second

Practitioners were asked about the 'children first' philosophy and what it meant to them. This question was directed at practitioners in both counties to determine whether it is a concept that only has significance in Wales. There was consensus (in all YOTs) that although young people came into contact with the YOT because of their offending behaviour, they should not be labelled or stigmatised because of it, as it is only one facet of their life and generally an outcome of negative factors that affected their development. As such they should be regarded first and foremost as children:

It means treating them as individuals – the crime they have committed is a problem that needs to be solved but it does not define them, it's part of their behaviour. It's encouraging them not to feel they have to live up to the label of offender (WBP4).

Practitioners spoke of the importance of the language used when describing children and young people in trouble with the law. Some would never refer to them as 'young offenders' and would challenge other agencies (and colleagues) if they did. Their concern being that if this description was used, it could stop other agencies/individuals from seeing young people as having non-offending personas and wider needs, so it was important the status of 'child' was acknowledged first:

We never refer to a young person as a young offender. They are young people who are known to us because they have got into trouble with the law, or are known to substance misuse services for that reason, or CAMHS because they have a health problem (EBP12).

Where differences of opinion emerged about 'children first' it had to do with the respondent's occupation, their training and function. For example, as the job of the police is to catch and convict criminals, their focus was on offenders-first. Probation officers could not ignore public protection as it was fundamental to their training and featured in the way they managed their caseloads:

My training has been public protection and there is no shying away from it, so this is a difficult thing for me to get my head around, if their offending is really serious. There is a threshold for me somewhere up near grievous bodily harm and serious specified offences (WBP10).

The preceding quote is of interest, because when discussing the notion of 'children first', practitioners were inclined to talk about young people who had 'made mistakes' or done 'something silly', possibly because most youth crime is not grave or serious in nature. However, it was questioned whether a genuinely 'children first' approach could still be taken when serious offences had been committed, as the needs of the victim and wider community had to be considered. Also, offending behaviour could not always simply be excused on the grounds that the perpetrator was a child:

I have worked with some very serious young people who needed to be locked up and who you could not want on the streets. I don't disagree they are children and if there are genuine concerns I don't disagree with putting children's welfare first, but you must also address the offending behaviour (WBP9).

For others the contrast was not as stark as they regarded their role to be one of reconciling welfare and justice tensions. Even when there were public protection concerns, young people could still have significant vulnerabilities:

There are very few cases where public protection outweighs welfare considerations. We also have to bear in mind that those that present a serious risk to the public are often extremely vulnerable as well (EBP7).

Practitioners described a number of characteristics of a 'children first' service; it treated each young person as an individual with their own unique set of needs and problems, examined why offending had occurred and determined how best to address it with a tailored response:

It means treating each young person you work with on an individual basis. They might share similarities with types of offences committed and the orders they have received, but have travelled a very different path to get there (WAP2).

In terms of process we are offender first, because of assessment and risk, but in reality you can't effectively work with young people unless you look at the other issues as well. In terms of trying to move them forward its child first (EAP4).

In addition, a 'children first' approach would seek to understand and constructively respond to young people's behaviour, no matter how challenging:

I am supervising a young person, who uses appalling language and makes extremely personal remarks. He does it to deflect you away. It's about getting to know him and understanding why he does what he does. The public would demonise him if they saw him at his worst and say he deserves what he gets, but children first understands why he behaves the way in which he does. You have to persevere and bring them around to something acceptable. It's not just about processing people through and hitting targets (EAP1).

However, these definitions could also characterise a risk-led approach and although concerns for young people's welfare and well-being came across strongly in a number of areas of this study, risk management was regarded as compatible with a 'children first' approach (see also section 10.4). Whilst it was the UKG's intention that youth justice singularly addressed offending behaviour, for some practitioners this did not reflect the day-to-day reality of what they did or felt they should be doing. There was variation in their views

on this. For some, a 'children first' approach required that welfare needs be addressed before offending-related work could be undertaken:

Sometimes young people's needs have to come first, to get them settled, so that they can engage and respond to us and our programmes (WAP1)

Whereas others suggested the YOT was not fulfilling its function properly if there was too much emphasis on tackling welfare problems:

I spend masses of my time looking at housing and education. If you looked at my role profile in pure terms perhaps I should not be doing these things, but be delivering interventions that get you to think about your offending behaviour and strategies to stop it (EAP11).

Other practitioners saw themselves solely as agents of a criminal justice service:

We are the only agency that deals with offending, whereas other agencies are dealing with welfare issues. The criminogenic work we do is on the consequences of actions and how to avoid it developing (EAP10).

10.3.1 Differences between England and Wales?

There were practitioners in each of the four YOTs that described their team as a 'children first' service: no-one considered they were primarily an offenders-first service or that they solely focused on punishment. Practitioners stressed their main concern was for the welfare of the child (which the ranking exercise on pages 73 and 76). However, whilst this might be the overarching philosophy of the team, there were practitioners within each YOT that questioned whether universal acceptance of a particular ideal could realistically exist, as practice was open to wide individual interpretation (also highlighted in chapter six). This was also true of the 'children first' philosophy:

I don't see us an offender first team, but I don't see it in other teams either. I may see it in a group of workers or in aspects of their work, but I do not see it as a prevailing ethos (EBP3).

The small number of practitioners who had worked in England and in Wales (from Wales A and Wales B) were asked whether the 'children first' philosophy only existed in Wales. One of the respondents had not heard of the *AWYOS* or 'children first' and was not convinced the

approach was anything more than a 'grandiose vision' of the WG that failed to take account of the need to manage risk. The others did not think 'children first' was exclusive to Wales as differential practice existed within YOTs and although practitioners might claim to adopt a particular approach, their actions did not always bear this out:

I have experienced practitioners focusing too much on the offences and forgetting some of their welfare aspects and becoming too institutionalised in the system as they are regularly dealing with risk. I have seen practitioners who deal with persistent offending becoming forgetful of children first, offenders second. They end up just processing young people through the system. I have also experienced team members who are glad to see the back of some young people as they do not have to work with them anymore (WAP3).

There were other factors that could impact on the extent to which a 'children first' philosophy was adopted, such as workload capacity and having the time (or not) to deliver the service in a particular way. This was irrespective of whether a YOT was in England or in Wales, and to some extent echoes the findings in chapter five that there may be a tendency to become more process-driven when demand on the system is greater:

There are possibly different approaches to this in Wales. It's about volume as well as sentiment. It's easy to take this approach when you have the luxury of time when working with young people. In [a city YOT] it was different, you would want to be able to do some of these things but because of the volume of cases you could not (WBP6).

Another relevant consideration is the extent to which other agencies are aware of, and buy into the 'children first' philosophy. The YOT is a multi-agency entity and even if some of its partners were committed to a particular ethos, it did not follow that all were, and this could place constraints on the extent to which a 'children first' approach was universally delivered. As one respondent put it:

It's good the Welsh Government has this view but how far it percolates outside of youth justice is difficult to say (WBP6).

For example, practitioners considered that social services should take a 'children first' approach, but found that in practice they did not always do so, citing cases where requests for services had been refused (see for example pages 120 and 121). Others referred to the

police, courts and the local authority ASB teams as not always fully enough recognising the status of the 'child' or being tolerant and/or understanding of their difficulties or behaviours:

It's like sitting down with ten hysterical Daily Mail readers, who demonise young people or who have never heard of the UNCRC or the Children Act. They [the ASBO team] have put up pictures of 12 year olds around the area – it's against everything sensible (EBP8).

I am not afraid to stand up to other agencies I have done it for the last 12 years. I will fight for [young people]. I am their advocate where I feel its right, but I will also challenge them. I look out for their rights and needs (WBP5)

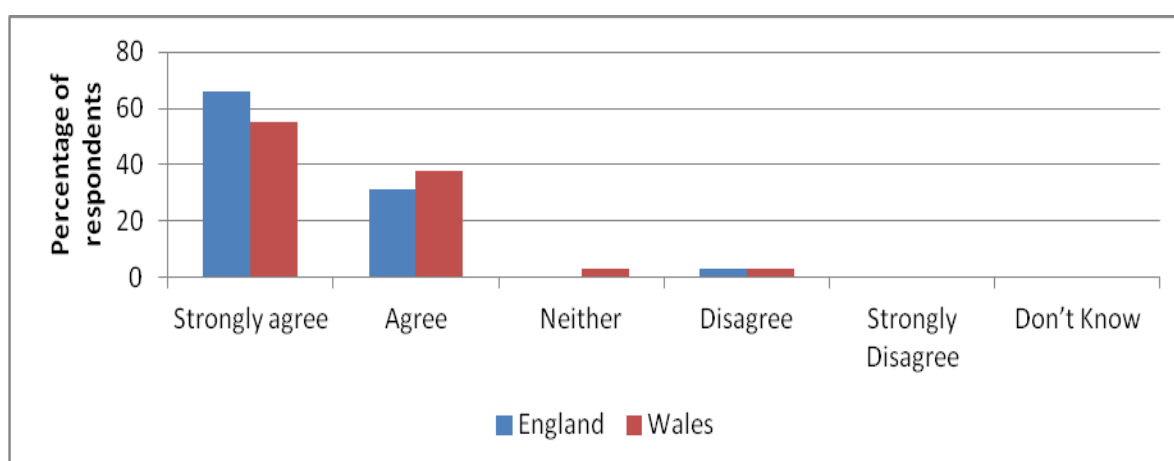
Much of the commentary regarding a 'children first' youth justice system in Wales is largely directed at YOTs, but the adoption of the 'children first' philosophy needs to be universally accepted by criminal justice agencies and universal services, (which is also discussed in chapter six), if it is to be fully realised. It is beyond the scope of this study to examine, but it suggests it merits further investigation.

In conclusion, the discussion reveals an interesting picture of how practitioners think about rights, but does not demarcate practitioners in Wales as having a more rights-based ethos than practitioners in England. It reveals that the existence of a particular policy (in this case the UNCRC) does not guarantee that it is known about or understood by those who may have to implement it. From the practitioner perspective the UNCRC appears to have little *direct* influence on practice in either England or in Wales, but as previously noted the principles enshrined in the Convention were often part of YOT culture, just not recognised as such. Ultimately, there was consensus within YOTs in England and in Wales about what characterised a 'children first' service and there were practitioners in England that considered this described the way in which their YOT operated (or aspired to operate). There was appeal in the 'children first' approach, as it exemplified for some respondents how they believed a service should be delivered to young people. Practitioners in England and in Wales presented a similar and generally unified picture which did not suggest the approach in Wales was more 'children first' or in England more 'offenders first'. Where there were differences of opinion it was usually - in both countries - because of the professional background of the practitioner, personal and occupational philosophies and practice preferences. However, it is noteworthy that acceptance of the 'children first' approach was also contingent on the seriousness of the offending, with a commitment to it diminishing for more serious crimes, as public protection came more to the fore.

10.4 The tension between ‘children first’ and risk

Having established what views there were about ‘children first’ and rights-based practice, practitioners were asked if there were any tensions between them and risk identification and management. The question is relevant as there has been criticism that risk focuses too much on individual deficits and not enough on broader needs (Case 2006). Practitioners were in accord about the importance of risk in youth justice practice. The question elicited one of the highest levels of consensus, with 97% of practitioners in England and 93% in Wales, agreeing that an effective youth justice system should identify and manage risk (see figure 10.2).

Figure 10.2: Practitioners’ views of whether an effective youth justice system should identify risk and manage it



It is also of interest that practitioners in rights-focused Wales rated the importance of risk management more highly than children’s rights (see figure 10.1, page 178). It is possible the higher endorsement of risk-based practice (in England and in Wales) is because practitioners understand how to assess risk, (there is no similar equivalent in relation to rights) and because assessment of risk is mandated by the YJB. Also, when compared to the outcome of the ranking exercise (see figure 6.3 on page 76), which asked practitioners to consider the importance of various practice approaches to each other, risk was placed in fifth place in England and in the bottom three in the overall ranking in Wales. In both instances ‘best interests’ had been placed first.

In nearly all instances, in explaining why risk was important, practitioners in both countries agreed that risk and welfare-based responses to youth crime were complementary to and compatible with each other.

I don't see how you can separate risk and welfare – you cannot isolate the two – you can't do an accurate risk assessment unless you know the child and encompass the welfare in that as the two are often related. I don't see how you could manage a risk unless you think about their welfare (EBP6)

The rationale being that welfare needs had to be understood and addressed in order to properly manage risks (to the victim and the community). Practitioners considered that if they did not attempt to improve shortfalls in welfare, they would not reduce risks and this would not be acting in the 'best interests' of the child. However, they also stressed that encouraging young people to take responsibility was part of risk management, which is not a feature of rights-based practice, so tensions exist.

10.4.1 Assessment and Rights

Practitioners discussed the importance of assessment to unpick what could be a complex picture of unmet needs and difficulties. However, conflation between welfare and criminogenic problems and how they should be assessed presented challenges that had implications for rights-based practice. Asset is the standard assessment tool used by YOTs to determine the criminogenic link to the likelihood of re-offending. Practitioners liked it because it was holistic and structured, but also felt it had a number of weaknesses. Within the context of this discussion, one of the main problems was what to assess because of the contribution welfare problems can make to the likelihood of re-offending. The Asset guidance is specific in stating it should only be those factors that are associated with the risk of re-offending (Baker 2005). However, some practitioners found it difficult to separate welfare problems from criminogenic behaviour and to determine what priority should be given to each, when determining risk levels. The picture could be very unclear when examining certain behaviours such as non-school attendance. It is a welfare problem, but could be criminogenic if the young person was offending whilst not at school. It was suggested this 'blurring' was the reason why there were different interpretations of behaviours and different assessments of the risks young people present:

You are stuck between offending and welfare. You score him highly on welfare, because he offended against his mother, but then leaves home so everything improves dramatically. I could have scored him very low because he is no threat to the public, as his offending was very specific (EBP3).

Practitioners recognised they should score the risk of re-offending⁷¹ as accurately as possible because it determined how much contact the young person would have with the YOT. However, their views on how the scoring was used varied, from those described as being ‘slaves to the score’, to others that used it as a guide and would change it if they felt it needed adjustment. Other literature has commented on the subjectivity of Asset scoring and manipulation (Phoenix 2009) and there was similar evidence of it in this study. If practitioners did not think the final Asset score reflected their assessment, they would alter it, firstly in terms of what felt right to them and secondly to reduce or increase the amount of contact the young person would have with the YOT, even though it may not be reflective of the risk of re-offending:

I have had young people that I know could benefit from intensive supervision so I have uplifted scores to make sure they do, but they were probably not a high risk offender. Other young people may be dropped down a point so that they get a lesser service. It’s trying to be black and white and it cannot be because its people’s lives (EBP11).

This suggests a qualified approach to ‘children first’. Asset is an offence focused tool, which all YOTs have to use, however the discussion demonstrates assessments can be manipulated to address welfare needs and deliver what in other contexts have been described as rights and entitlements. It also reveals a complex picture of how practitioners view the relationship between addressing welfare needs and offending-related problems and the difficulties in disaggregating the two, to focus solely on offending behaviour. From a rights-perspective there are tensions because of the different ways in which the assessment process is interpreted and the degree to which Asset scores⁷² might be manipulated to increase or decrease the contact young people have with the YOT. This is potentially problematic if the increased contact is intended to meet welfare needs, because it will also place the young person at an increased risk of breach if they do not comply, which practitioners tended not to comment on. However, practitioners in England and in Wales experienced the same challenges, made similar comments about use of Asset and would adapt their practice, if they felt it was necessary and were comfortable in doing so.

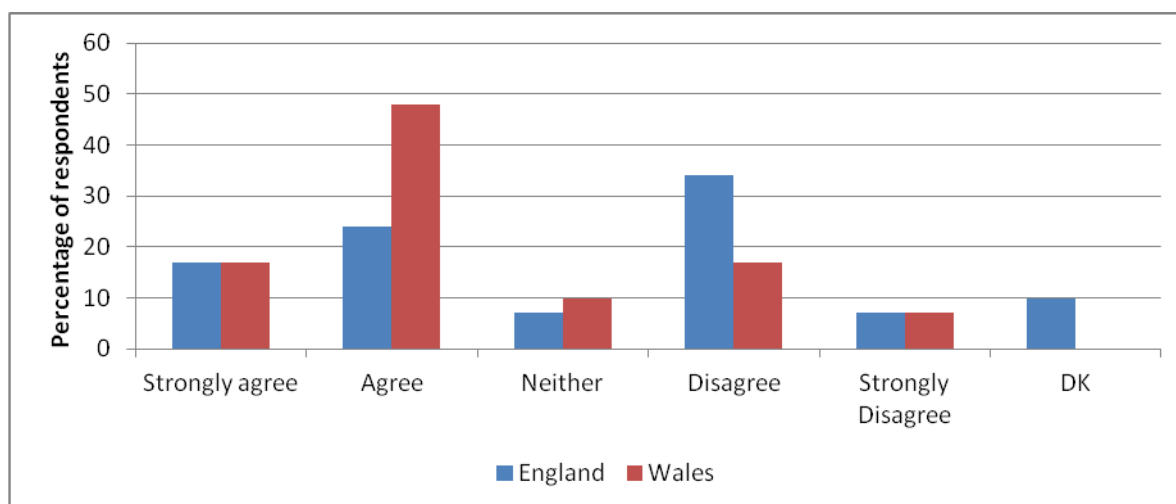
⁷¹ Asset asks practitioners to score the problems they identify against a risk of re-offending that ranges from 0, no risk to 4, a very high risk.

⁷² The YJB is introducing a new version of Asset, Asset Plus in 2015, which will not score criminogenic risk in the same way.

10.4.2 Children First and National Standards

Practitioners were asked about *National Standards* (NS) and whether the youth justice system needed them to be effective. This is of interest as it has been suggested that rigid application of NS to enforcement in particular, contributed to increased use of custody, despite the original offence not having warranted a custodial outcome (Bateman 2011b), which clearly has rights-implications. More practitioners in Wales (65%) agreed that an effective youth justice system needed NS, than in England (41%) (See figure 10.3).

Figure 10.3: Without a set of National Standards to operate to the youth justice system will lose credibility and effectiveness – practitioners’ views



Practitioners in favour of NS felt it gave them a framework to work within, helped them to plan and organise their caseload and made sure key actions happened so that young people received a consistent service, irrespective of the capacity, size or resources of the YOT. Standards were also important because they set a common benchmark and mediated against practice becoming too diverse:

Staff can be very wide ranging in their views, attitudes and beliefs around what is and is not enforcement for example. They need standards to keep them within a ball park, so they are helpful. If you got rid of them completely you would have a car crash (EAP14).

The main concern was that without NS, the youth justice system would not function properly as it would be dependent on the vagaries of individual workers:

Without National Standards it's possible that standards could fall. The tendency might well be to not see young people as much as we should, because it's a pain to see someone intensively or they are a pain, it may result in dropping contacts but not necessarily for the right reasons (EBP9).

A greater number of practitioners in England (44%) than in Wales (24%) disagreed that youth justice would be worse off without NS, although 10% of respondents in England were non-committal (indicated by 'neither' in figure 10.3). Where practitioners did not think NS were necessary, it was because they did not want their practice to be directed to such a close degree. Others felt that NS should not solely determine what practitioners did:

You must not get lost in it just so the YOT we can meet its stats and performance measures. We need to think about [National Standards] in terms of are we working as effectively as we could be (EAP6).

The use of discretion was also discussed when applying NS. For some, although NS directed what they did, it did not make practice formulaic as professional judgment could be used to override the Standards, when there was a good reason for doing so. These practitioners did not feel they had to rigidly stick to NS, if the need for departure could be justified and was supported by management:

I don't agree that National Standards make us more robotic. If I am dealing with enforcement issues, I would discuss them with my manager and if we did not feel the National Standards direction was the best one to go in and I could justify it, I am sure we would not [breach]. I would evidence my reasons for the decision and could defend my decision (WBP4).

Others made reference to the Standards setting out the minimum requirements and stressed they would provide more support to young people if it was needed:

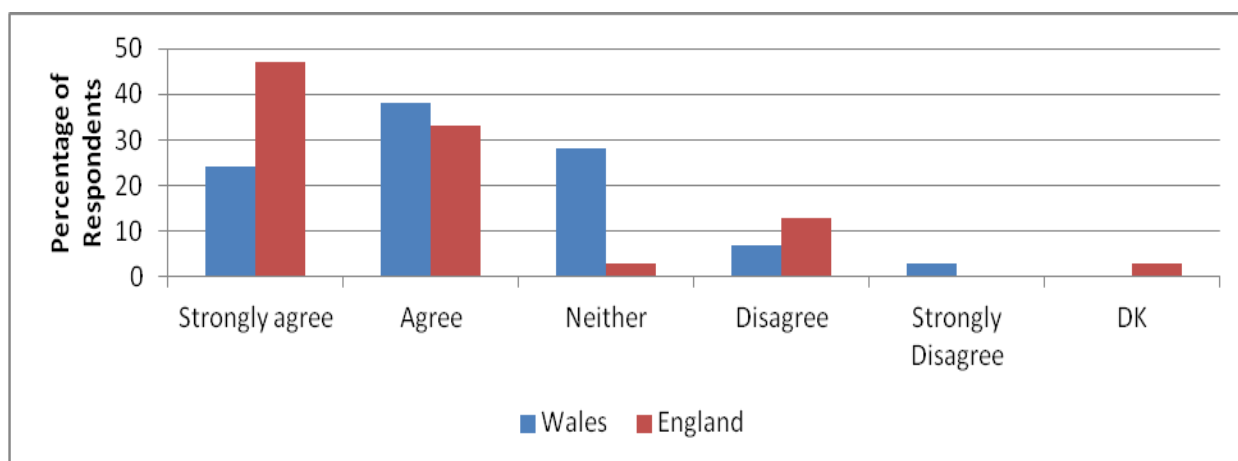
There is some leeway around them and I can see a young person more than National Standards demand if I feel it's important and my manager agrees (EAP13).

However, the extent to which this happens is debatable. Although some practitioners indicated they used their discretion, others suggested this would be the exception rather than the rule. The question of whether there should be more opportunity to use discretion was explored further.

10.4.3 Discretion

Figure 10.4 shows that most respondents were in favour of using professional discretion, although the proportion was higher in England (80%) than in Wales (62%). In general, many practitioners felt they were able to follow the prescription of the Standards and apply discretion, when necessary and this did not produce any tensions. There were more practitioners in Wales (28%) that had a neutral view than in England (3%). There may also be some correlation between Welsh respondents favouring NS more than their English counter-parts (figure 10.3), and being reluctant to rely on their own judgment, because they were content with the parameters of NS.

Figure 10.4: Practitioners' views about whether the use of discretion should be maximised in youth justice practice



There were a smaller proportion of practitioners, 13% of respondents in England and 10% in Wales, who disagreed that the amount of discretion they had, should be increased. One of the arguments against this was the potential for variant practice within, and between YOTs, leading to inconsistent outcomes for young people:

We had a young person who threw a wild punch in the street; he was charged with GBH and went to prison. Some in the team thought he is responsible and others thought it could be anyone that threw a punch when provoked. I can see why the YJB would not want to entrust teams with these decisions (WBP10).

As another put it:

Personal discretion is dangerous as there can be very disparate responses – there should be accountability. As far as is humanly possible young people should receive

a consistent service, even though we all assess and work differently, whether in London or Cornwall and also in a single team. Defensible decision-making is also about accountability (EBP9).

Others were apprehensive about departing from NS because of the possible consequences, of inspection in particular:

Practitioners can be scared if they do not stick to what the computer has said. They get nervous about the impact of inspections or if something happened, how they would defend it. What we need to be thinking about is that our worse prediction did not happen, even though the computer was telling us it would (EBP3).

However, some questioned whether having the intricacies of practice examined, made it any better:

All the process papery stuff does not. All the emphasis on showing your working out and then we can see where it went wrong – it's not that simple. I can't say whether this has or has not enhanced my practice because it's not my preferred way of working. (WAP6).

Most of the comments about discretion were mainly about NS, but there were also some about Asset. The first being there should be more scope within the assessment process to use professional opinion to analyse the information gathered:

The present one is lacking in terms of making people analyse what it is about someone's living arrangements that makes them a risk and is a risk factor.

Practitioners tend to describe, they don't analyse (EBP7).

Secondly, others questioned whether an Asset should be completed for every minor offence, although recognised this could be difficult to manage:

Most serious further offences come out of the lower levels cases, so it's hard to know where you draw the line. You are damned if you do and damned if you don't. Not being able to use your discretion is a hindrance (WBP10).

How comfortable (or not) practitioners were about using their own judgement and the degree to which they wanted to or not thus varied (and was not dependent on whether based in

England or Wales); some wanted to be left to make their own decisions with minimal guidance, whilst others wanted detailed direction, so there was no unanimity on the most appropriate balance:

Some of the case managers here would like it [Asset] to be completely blank and to be able to write just what they think, but that does not suit me. I have done children's services assessments and they were too vague for me. I was not always clear what they wanted or whether anything significant was missing (WAP8)

More practitioners were in favour of having Standards than not and some commented on NS having become less prescriptive than they had previously been (see page 15). There were benefits to this, such as reductions in unnecessarily frequent and repetitive processes (notably having to re-review Asset when nothing substantive had changed), but also concerns, notably about a decrease in the required number of visits to young people in custody. Although there were claims of being able to use discretion and override NS, there was some discomfort in allowing free-ranging discretion and in abolishing NS entirely. Some of the more extreme concerns about the system disintegrating without NS, failed to recognise there might also be benefits. For example, one practitioner (with a probation background) compared the prescription of the NS for youth justice system, to the approach of the probation service, which had made its practice standards less rigid. This had a positive effect and was not problematic:

The concern in probation was when they were rolled back that it would affect the quality of work. In my experience it improved it because you have to be driven by your own assessment rather than the formula you are expected to use (EAP3).

10.4.4 The Scaled Approach

The Scaled Approach (SA) was introduced in 2009 and attracted academic criticism (see page 13). A number of practitioners chose to comment on the SA and its impact. In the main they liked it because it helped to determine the contact-frequency with the YOT, by filtering cases into a scale-band (based on the overall Asset score – see page 12). This determined whether the young person was at a low, medium or high risk of re-offending. Practitioners (in England and in Wales) felt the SA made much more sense than the blanket approach that had previously been in place, whereby NS specified all young people had the same level of YOT supervision irrespective of their needs/risks. The main flaw being some young people had an unnecessary and unwarranted level of contact with the YOT that did not correspond to their assessed risk:

It can reach farcical proportions when you have to find things for young people to do just to tick the box. We end up seeing young people we don't need to and padding out young people's programmes with inappropriate activities and almost baby-sitting type of activities, simply because they need to be seen. If we don't, the inspectors will pick up on it (EBP5).

As a result practice was driven by what the system determined and not what the young person needed. This did not allow practitioners to manage their caseload with much flexibility. In contrast they liked the 'scales' and graduated approach (although manipulation of scoring could still occur), rather than having to see all young people a set (and inflexible) number of times. Some commented this had given a degree of discretion back:

It made more sense as previously we were seeing young people that did not need to be seen, but we had to because it was what was prescribed. There was not that much discretion to operate outside of that (EAP14).

You are working on risk issues and accepting the fact that a high risk case will need more input, whereas before two appointments a week covered everybody. It feels more appropriately levelled (WBP11).

As well as signposting young people to the level of intervention they should receive, practitioners felt the benefits of the SA were they had more flexibility to determine how they arranged their supervisory contacts:

If I have to see them 'x' number of times within a month, I may not do that weekly, I could say see them three times in one week and once a fortnight later. So we are meeting the target and working with the young people in a way that suits them (EAP13).

Overall the SA was regarded as a more favourable working model by practitioners (in England and in Wales), who also had similar views that it could sit comfortably with a 'children first' approach and disagreed with the academic criticism of it as a model:

It's a pure model and it's been deliberately misrepresented in some places and those critics seem to disconnect it from young people's needs. Actuarial assessment of risk has a clear role to play – you have to be able to assess risk – if you don't use this

approach where are you going to begin – this young person looks like they are a risk? (WAP11)

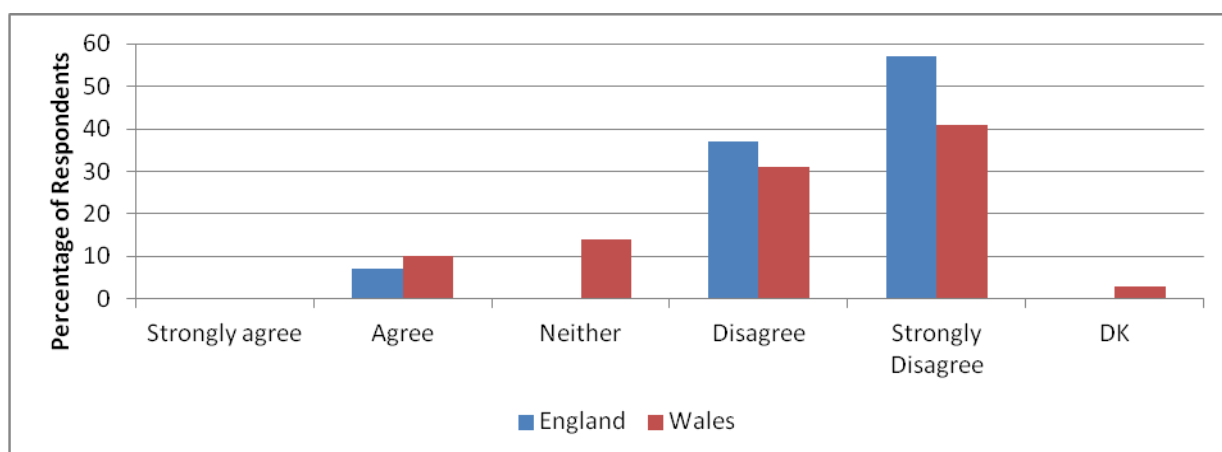
10.4.5 Payments by results (PbR)

Finally, practitioners were asked to comment on payments by results (PbR) and its applicability to youth justice practice. They were asked about this as the Coalition Government's proposals for the youth justice system had indicated that PbR would be introduced into offender supervision and management (see page 16). This has not happened in youth justice to any significant degree, aside from the piloting of the youth custody pathfinders (pages 16 and 146). However, there has been criticism of PbR in relation to rights (NAYJ 2011).

The majority of YOT practitioners in England (94%) and in Wales (72%) did not think PbR would provide an incentive to reduce offending (figure 10.5). The difference between the countries is largely because 14% of Welsh respondents had a neutral view on this. The objections to PbR were wide-ranging, but clustered around a number of broad concerns. These included a lack of evidence to support the efficacy of the approach and lack of clarity about how it might work in practice. There were also principled objections on the grounds that social work should not be a financially driven/motivated occupation or that a market economy should be applied to youth justice, as practice could become target rather than needs focused:

We should always focus on the child and risk to the public, not the financial (EBP7)

Figure 10.5 Practitioners views about whether PbR will provide an incentive to reduce offending



Practitioners also felt that PbR would not have a significant effect on re-offending rates or resolve the causes of offending and was therefore not the best way to provide a service to young people. Others thought it could be de-motivating as the impact of work with young people was not always immediately apparent. It also implied that YOT workers were not currently focused enough on reducing offending.

The minority who thought PbR could incentivise, did so, because it would focus practitioners more on preventing offending and it could work with strict controls. However the overall view was that whether taken from a right-based perspective or not, the best way to deliver a service to young people, was not through PbR.

10.5 Reconciling the different approaches

The preceding discussion revealed an interesting picture of how practitioners think about their practice. There was a high degree of consensus amongst all concerned (whether in England or in Wales) that working with risk is fundamental to what they do. Practitioners universally liked the SA as it gave them more scope to use discretion and reduced the need to supervise young people at a higher level than was warranted. Their comments frequently compared the 'new' approach of the SA to the 'old' approach of less flexible NS, indicating that on the whole some form of practice standard was preferred.

However, the degree to which practitioners wanted to be directed through NS varied between respondents in England and in Wales. A greater proportion in Wales felt that Standards were necessary and proportionately fewer practitioners in Wales wanted more flexibility in their practice, than practitioners in England. There was also a tension (whether in England or in Wales) as practitioners claimed they would use discretion by either formally addressing the need to do so within their supervisory structures, or by simply adjusting or manipulating their Asset scoring to achieve whatever effect they felt was desirable. However, it is unlikely from some of the comments made, that every single case where there was perceived to be an incorrect level of contact/supervision, would be challenged and practitioners in many respects colluded with the system by continuing to see young people they did not need to, even though it concerned them and they found it hard to develop meaningful supervision for some young people.

These are all interesting issues when set within the context of 'best interests'. Although deficits in the youth justice system were noted and were apparent to some practitioners they continued to carry out what was expected of them. Concern about shortcomings being

identified in inspections was a reality and motivated practitioners to ensure they followed guidance/NS. It was apparent in the discussion of working methods that practitioners accepted what they had to do, even though it might not be in the young person's 'best interests', or could potentially infringe their rights. Their ability to constructively challenge the system was limited. From this perspective there was no overall difference between those in England (who might have been regarded as more interventionist in their approach because of UKG policies) and those in Wales (more welfare/rights orientated), as the differences were far more subtle and individualised, rather than there being a clear cut national divide.

There are tensions in the way practitioners work and what they consider to be the best approach (whether rights, risk or welfare-led etc or a blend of different methodologies) and wide-ranging viewpoints that are less to do about being a practitioner in England or in Wales, but more about what individuals feel comfortable with. Cavadino and Dignan (2009) identified that different forms of practice can co-exist together, which this study confirms is as relevant at a practice as policy level. It is also of interest that whilst practitioners recognised that PbR has a number of undesirable features, they were less questioning of the way they operated in other respects, focusing more on mitigating than questioning their practice or simply accepting their world as it is, albeit with a degree of manipulation at times.

Chapter Eleven

Conclusions

11.1 Introduction

This final chapter starts by briefly discussing some recent developments since the fieldwork was undertaken that impact on youth justice, before providing an overview of the findings and suggesting implications for policy and practice. The research question I sought to establish was ‘to what extent is there is distinct youth justice practice in Wales and how far this can be attributed to the policies of the WG’. The key findings indicated that: there is a policy difference between England and Wales; that the relationship between the UKG and WG matters; Welsh context is important; the practice issues identified and outcomes in England and in Wales were similar; and individual YOTs are the site of most cultural difference. In order to reach these conclusions, I examined the youth justice policies of the UKG and WG, analysed data about the operation of the system in England and in Wales and interviewed practitioners in two YOTs in England and two in Wales about their perceptions, attitudes and practices. A limitation was the number of participating YOTs, which represent a small proportion of the total current number of 140 in England (1%) and 15 in Wales (13%). Other limitations were discussed in section 2.9. The findings suggest that it would be worthwhile to extend the research to a larger number of YOTs, to establish if these conclusions can be generalised to areas that may differ from those studied in terms of characteristics, demographics and working contexts.

11.2 Recent developments

A new joint strategy, *Children and Young People First (CYPF)* (WG/YJB 2014) was published in 2014. It builds on the *AWYOS* and reflects the current priorities of the WG and YJB. It contains a continued commitment to a ‘children first’ approach based on the children’s rights principles contained in the UNCRC. The aspiration of a rights-based Wales was questioned by the outgoing Children’s Commissioner for Wales in October 2014, when he criticised the WG for its lack of vision and leadership regarding children and in particular the lack of appointment of a minister for children (BBC News 2014a). An independent review of the functions of the Commissioner recommended the remit should be extended to all children/young people that reside in Wales, whether the functions that relate to them are devolved or not (Shooter 2014). If this recommendation is adopted, it would apply to youth justice.

The referendum on Scottish independence was held in September 2014 and although it concluded with a 'no' vote, it was followed with a declaration from the Prime Minister that:

There are plans to give the Welsh Government and the Assembly more powers and I want Wales to be at the heart of the debate on how to make our United Kingdom work for all our nations (BBC News 2014b)

However, in the 2015 Election manifesto, the Conservatives advised that justice would not be devolved (Conservative Party 2015), so for the current term of government, the need for bilateral arrangements will continue. It remains to be seen whether, following WG elections in 2016, the question of the devolution of youth justice will resurface as a national priority.

In terms of changes within the youth justice sector, the number of YOTs in Wales, has contracted from 18 to 15, due to falling caseloads and the WG's regionalisation agenda. The YJB de-commissioned Hindley YOI in 2014, because of the continued reductions in the youth custodial population (YJB 2014b). Werrington YOI in Stoke-on-Trent became the designated establishment for boys from North Wales. In November 2014, the UKG announced a review of how YOTs meet the needs of young people, indicating the YOT model is not one 'set in stone' and services need to continue to 'evolve' (Puffett 2014). This reported in May 2015 (Deloitte 2015), but there were no further developments because of proximity to the General Election. The incoming Conservative Government advised of a further review of youth justice, which would examine whether it is fit for purpose and able to meet current challenges (Puffett 2015); what if any changes will arise from this remains to be seen. In addition, plans to build the secure college were abandoned. There had been opposition from the House of Lords, but custodial reductions were cited as the official reason (BBC News 2015).

11.3 Key findings

The key findings from the research are discussed in the following section, which is sub-divided into a number of thematic areas.

11.3.1 There is distinct youth justice policy in Wales

It has been proposed that youth justice in Wales has different features to England, as 'dragonisation' has occurred, meaning that Wales has developed its own distinct approach (Haines 2010; Drakeford 2010; Muncie 2011). Proponents of 'dragonisation' suggest that as the services youth justice relies upon are devolved in Wales (education and training, health,

housing and social welfare), youth justice is already partially devolved because the funding for, and the policy direction of these services, is determined by the WG and not the UKG. However, there is also a tension, as the statutory framework, structures and processes for youth justice are determined by the UKG and are the same in Wales as in England. The scope to operate outside of them is therefore limited. The *AWYOS* did not propose structural change or anything different in this respect.

In terms of policy direction, the principles of the WG and YJB have been combined into a joint strategy that sets out the shared vision for youth justice in Wales. The *AWYOS* placed significant emphasis on the role that universal services and access to universal entitlements could play in the prevention of offending. In many respects it was where the policies of the two governments connected. The *AWYOS* contained the statement that children and young people in trouble with the law should be treated as ‘children first’, which emphasised the importance of protecting the welfare of young people in the justice system, of finding a balance between their needs and the interests of the community and of ensuring young people have access to a range of services that can improve their well-being, to help them to lead crime-free lifestyles. This is distinct from UKG policy which is primarily offender focused.

A further difference between the countries is the WG has strengthened its commitment to the UNCRC by incorporating it into its domestic legislation. The UKG has not done this and its youth justice policies have been characterised as neo-liberal, risk-based and punishment-focused that have lesser regard for other influential factors in young people’s lives and seek to responsibilise them for their actions. It should, nevertheless, be noted that the YJB’s current mission statement indicates a commitment to championing a child-centred youth justice system that is distinct from the adult system and recognises obligations under the UNCRC (YJB 2015). The youth justice system is now less prescriptive and interventionist than it was under the New Labour administration as greater opportunities were introduced by the Coalition Government to use professional judgement and discretion (see chapter two). One of the biggest impacts being that young people have been filtered out of the system and the size of the youth justice cohort has progressively reduced in England and in Wales.

‘Children first’ is a key characteristic of WG policy, but whether it means the same thing in 2014, as it did in 2004, is of interest. This may not necessarily be the case as policies change over time depending on political priorities and other contexts. In the WG there have been various configurations of policy portfolios over the last 10 years and four different ministers with responsibility for youth justice, some who have been more interested in it than

others. *Extending Entitlement* continues to exist as a policy in Wales, yet *CYPF* makes no explicit reference to it, although Welsh practitioners clearly identified with its aspirations. The lack of visibility of *Extending Entitlement* may mean it no longer carries the level of importance it once did, when it was integral to the *AWYOS*. It is beyond the scope of this study to critically compare the *AWYOS* and *CYPF*, but there are some fundamental differences between the two. Re-visiting what ‘children first’ means might be a relevant consideration to any future examination of the ‘dragonisation’ of youth justice in Wales. The policy differences between the countries raises the question of whether youth justice practitioners in Wales can deliver youth justice that is more rights-based and welfare-focused, and whether practitioners in England are confined to delivering risk-related responses and paying little attention to other aspects of young people’s lives (see section 10.4).

11.3.2 Government relationships matter

The point of unification between the YJB and WG is the joint youth justice strategy. However, what is also important is the nature of the relationship between the governments. Chapter four identified that not all UKG initiatives have fitted with the direction the WG might have chosen to go, if it had autonomy over the justice system. However, the aims and objectives of both governments are currently closely aligned (in relation to youth justice) and the relationship is mutually supportive, even though there may be tensions or differences over particular policies towards those in trouble with the law. The WG has developed a growing interest in youth justice and sought to extend its influence, notably through consultations on how the system could develop in Wales, conducted in 2012 and 2014. Nonetheless, the YOT managers in Wales interviewed for this study (see chapter six) felt that WG authority had been of relatively limited significance despite this increased interest and even though the WG provides funding to YOTs for youth crime prevention activities (see section 4.5). The presence of a YJB Cymru team in Wales is important in the maintenance of the relationship with the WG and in ensuring the YJB centrally remains cognisant of the devolved context. This relationship has enabled the establishment of similar priorities and a number of joint initiatives (chapter five). However, past experience also shows that relationships between government officials are important (discussed in chapter four). Although there is current harmony between the YJB and WG, relationships are also susceptible to change.

The establishment of strategies relating to the placement of Welsh young people in custody has and continues to be a priority for both governments, particularly because of the impacts

of the continued de-commissioning of secure beds. There is an extensive joint resettlement work programme that has some different approaches to those taken in England (see section 9.8) and YJB Cymru and the WG have initiated an enhanced case management project to address the needs of young people with complex problems (see page 66), which has no corresponding equivalent in England. The resettlement and case management initiatives have been facilitated by funding from the WG, and are important for YJB Cymru (as well as the YOTs) in developing provision in Wales which might otherwise not have been possible.

The Wales Youth Justice Advisory Panel exists to assist the YJB and WG in implementing youth justice policy in Wales. There is a necessity for such a group because of the bi-lateral relationship and to ensure that key players in Wales are consulted about how services and responses to young people should develop. Its effectiveness in shaping policy in Wales will depend on how it functions, but it is an important group in overseeing the delivery of the joint youth justice strategy as its membership comprises key agencies and individuals that can influence awareness of youth justice, and the needs of young people in trouble with the law, within their own organisations.

11.3.3 Welsh context is important

The Welsh context is also important, aside from the devolution of services and their relationship to the justice system. Around 5% of youth justice activity is located in Wales, so it has a much lesser share of the youth justice market place than England. Youth justice in Wales is a relatively small world where the key players are well known to each other, which potentially make it easier to access them and to make things happen, than would be the case in England. YOTs are considerably smaller than in England (based on throughput of young people) (see page 64). One impact of smaller caseloads and different types of crime to the metropolitan areas of England (or indeed rural areas of England), has meant that UKG funding has not always been made available to Wales to develop services in the same way as in England. There are different funding streams in both countries that influence what YOTs can do, including the Youth Crime Prevention Fund in Wales, and funds which have come from a variety of sources in England that have no corresponding equivalent in Wales. Despite this, developments in both countries have been broadly similar. There are obvious cultural and linguistic differences in Wales and the impact of devolution has produced a greater gap between the policies of both countries, which the literature review outlined. This continues to be the case with the introduction of the Social Services and Well-being (Wales) Act 2014 and the Housing (Wales) Act 2014, both of which contain policies that are distinct to Wales.

There are significant rural tracts in Wales, with half of YOTs having a predominantly rural composition. Rurality has implications for the way in which services are delivered and means they are taken to the young person rather than vice versa. An implication of taking the service out is that cost and time have to be factored into working arrangements, but it is not obviously apparent whether YOTs operate differently in other respects to their urban counterparts and whether this affects outcomes for young people. Whilst attention has been drawn to rurality in this study, it is not clear how much difference it makes to practice and the interventions delivered (travel aside). This is an area that would merit further investigation, not least because there is a lack of research about youth justice in rural localities. The delivery of services in rural areas is just as relevant to large parts of England. New research could consider the extent to which rurality in the two countries impacts on youth justice in similar or different ways

11.3.4 Similarities in practice in Wales and in England

To date, practitioner knowledge of policy difference in Wales appears to rely on the dissemination of, and responsiveness to the joint YJB/WG's youth justice strategy; the *AWYOS* (and its successor *CYPF*). This is potentially problematic as major policy change tends to be accompanied by new legislation as the means by which the change is embedded in practice, as well as regulations and codes of practice that explain new practice requirements. Without a driver of change, the implementation of a particular policy by practitioners is not guaranteed. This study has found that practitioners' main preoccupations are what they do with young people on a day-to-day basis and they are less concerned with the directives of policies, strategies and conventions (unless they are mandatory). Practitioners tend to rely on the YOT manager to draw attention to what they need to know. One of the challenges for policy-makers in Wales is therefore how the adoption of 'children first' principles can be fully realised, albeit mediated by a concern with risk and public protection. This is dependent less on headline policy directives, and more on local factors, the preferences of practitioners and the influence/priorities of YOT managers.

The 'children first' approach suggests a different way of working and this raises the question of whether it is possible, when YJB performance monitoring and inspection processes require that risk-focused practice prevails. A tension might be anticipated, because UKG policy intends that YOTs should solely focus on addressing offending behaviour, whereas WG policy emphasises that welfare needs should have primacy in youth crime prevention. Whilst concern for children's welfare had to some degree fallen out of favour in discussion of

youth justice at a strategic level, the findings suggests it still has significant currency in the four YOTs that participated in this study: all appeared to be seeking, to a greater or lesser degree, to find ways to address welfare-related problems in their practice. The findings did not typify Wales as being simply welfare-focused or England as solely risk-led; rather they presented a more nuanced picture, wherein a number of factors lead to one or other approach becoming more dominant in particular settings.

Whilst ‘children first’ represents a difference in philosophical approach, the fundamental way in which the youth justice system in Wales operates is no different from that in England. It is premised on there being diversionary opportunities prior to and post entry to the criminal justice system and proportionate and appropriate responses to those that progress within it, with one of the major variances being how interventionist the system has been at any particular point in time (very in 2004 and not very in 2014). What is influential is the way in which YOT managers and practitioners (whether in England or in Wales), interpret what they have to do and how they manage their responses to young people on the welfare-justice continuum. There are differences of opinion within practitioner communities (e.g. the YOT) about the prominence and priority that should be given to either. This is less an issue of a clear-cut division between practitioners in England and those in Wales, as it has more to do with the practice culture of the team and the individuals within it (see section 11.7).

Further, if the delivery of a ‘children first’ youth justice relies on knowledge of children’s rights, derived from the UNCRC (and the AWYOS), there are some difficulties. Awareness of children’s rights and how they are incorporated into practice was limited in England and in Wales. The UNCRC was described as distant from practice and there was difficulty in conceptualising how to deliver a rights-based service. Practice did not directly originate from knowledge of children’s rights, but derived from practitioners’ own experiences, values and training, which were in accord (at least in principle) with providing a service that would be in the best interests of children and young people. Practitioners in both countries emphasised the importance of connecting young people to the services and support they needed (e.g. health, education, housing and social care), and regarded this as rights-based practice. However, in general, practitioners in Wales were no more well informed about the UNCRC than their counter-parts in England, and practitioners in England regarded connecting young people to support services as just as important as those in Wales. In this respect, the aspiration of ‘extending entitlement’ (which is a singularly WG concept), was fundamentally the same as aspirations in England, where such an approach was also regarded as part of an effective youth crime prevention strategy, despite the absence of a specific policy.

Given the rhetoric surrounding the children first agenda, the awareness of *AWYOS* among practitioners in Wales was lower than might have been anticipated. The mediating influence of YOT managers was evident and they did not promote the *AWYOS* within their teams or consider their practice was derived from it. Practitioner buy-in to the 'children first' approach in Wales, as a recognised policy, was accordingly limited. Nonetheless, practitioners in Wales thought that Wales should have its own youth justice policy, which leaves scope for policy-makers to consider how they might narrow the gap between policy, aspiration and implementation.

Although awareness of 'children first' and children's rights was limited, there was a clear understanding of the public protection agenda and acknowledgment of the importance of risk identification and management. There is also a commitment among practitioners in England and in Wales to meet the needs of the child, indicating that policy is therefore reflected in practice, despite its lack of direct impact. Further, whilst there appeared to be some accord (amongst YOT practitioners), of what a 'children first' service should look like, it was open to differing degrees of interpretation and in some cases professional rejection. This makes it problematic to suggest that in Wales there is common acceptance/adoption of it. Practitioners in England also thought they took a 'children first' approach in their delivery of youth justice, which also makes it difficult to claim it solely is a characteristic of youth justice in Wales.

11.3.5 The influence of practice cultures

One of the key issues to emerge from the study was the importance of local practice cultures. The clearest example of this was England A that changed its operation from being a process-driven YOT, to actively diverting young people from custody in particular. This was achieved without any significant change in national policy (or legislative frameworks), but as a consequence of the YOT manager wanting the team to work in a different way. The same could be said of the introduction of the Swansea Bureau, which was developed by a YOT manager who wanted to increase the available pre-court diversion options at a time when the system was interventionist and not allowing much scope for this. The YOT managers, in these and the other YOTs in the study were central to the establishment of a particular culture, which in turn was a more powerful determinant of local practice than policy initiatives or aspirations, albeit mediated by practitioner's own values, preferences and professional backgrounds. Managers saw their role as ensuring that services were delivered in conformity with legal requirements, national standards and YJB guidance and they interpreted policy according to how they understood its function, in relation to that central task. Experience of

HMIP inspections also emerged as an important factor in explaining how local cultures might develop.

The four teams examined in this study could be characterised in different ways: risk-led (Wales A), primarily welfare-orientated (Wales B) and child-centred (England A and England B). Nonetheless, all considered that ‘acting in the best interests’ of children and young people was fundamental to what they did, with the rationale for what they did coming from different motivations. In this sense, there was no clear dividing line between the approaches of Welsh and English YOTs, nor of the attitudes of those working in them. Rather a picture emerged in which YOT practitioners had a variety of competing demands and priorities placed upon them. The manner in which these tensions were resolved varied according to local and individual – rather than national – factors.

The data did not support a simplistic dichotomy in which English practice was more risk-focused while that in Wales was more welfare-orientated. Indeed, the differences between YOT cultures were not split on national lines. Furthermore there was a consensus among nearly all practitioners of the importance of addressing the welfare needs of children and young people, albeit that the precise way this commitment manifested varied from one location to another. All practitioners also acknowledged the central role of risk management to youth justice practice, posing a tension that was resolved in divergent ways. Finally, there were significant differences in attitudes, values and approaches within each of the YOTs that further complicated the picture. Given the small scale of the study, it is not possible to ascertain to what extent that these findings might be representative of English and Welsh YOTs more broadly, but there are no obvious reasons for thinking that they would not have a wider resonance.

Despite the similarities and differences, the system in England and in Wales has experienced continuing decreases in the numbers of first time entrants, those receiving first tier penalties, community sentences and custody. The trajectories in the two countries have been strikingly similar, indicating the effects of the changes have been experienced in similar ways, although the routes through which they have been achieved have sometimes varied (see chapters eight and nine).

11.4 Implications for policy implementation

The policy rhetoric in Wales at government level and in some academic commentaries is that ‘children first’ is a recognisably different approach to youth justice and is the key point at

which policy in Wales departs from that of England. Whilst this is reflected strategically, implementation at practice level has revealed a number of issues. Firstly, implementation of the joint WG/YJB strategy in Wales, relies on knowledge and awareness of it, understanding what needs to be delivered and why. This depends on how the policy is communicated to the YOT, its multi-agency partners, its management board and the wider stakeholders that can contribute to achieving the desired outcomes. The lack of awareness of the *AWYOS* (section 6.5.) indicates that more detailed guidance may be needed to explain to practitioners how a ‘children first’ approach can be implemented in Wales, within the UKG’s risk-led framework.

The *AWYOS* has relied on the extent to which YOT managers would adopt its strategies and find a way of implementing them. The best evidence of this is in Swansea YOT, where the manager decided to develop ‘children first’ practice in pre-court diversion (see section 8.4.2). However, this was not apparent in the two Welsh YOTs in this study, which had other priorities e.g. developing risk-led practices in Wales A and developing a common ethos in Wales B. As the beliefs of the manager are highly influential on how the YOT works, this means the team can be susceptible to locally induced positive and negative changes in practice (as chapter six illustrated). The WG/YJB therefore need to consider how they communicate to the youth justice sector what their expectations of it are to ensure that practice aligns with policy and is not subject to the vagaries of individual approaches. It is noteworthy that one of the aspirations of the WG and YJB Cymru in *CYPF* is to introduce reintegration and resettlement partnerships (see pages 57 and 176) as part of the Social Services and Well-being (Wales) Act 2014. This is of interest as it is the first time that WG (secondary) legislation and regulations could be used as the means through which WG/YJB youth justice policy in Wales is implemented.

Secondly, although any joint strategy is primarily policy guidance for the youth justice sector, the wider welfare implications of the ‘children first’ approach, indicates that it needs to be recognised amongst all the key agencies, (cited as likely partners in youth crime prevention), as a significant driver of how the youth justice system should operate in Wales. Indeed, Edwina Hart (when WG Minister for Social Justice and Regeneration) in the foreword to the *AWYOS*, stressed that ‘I hope its messages will be embraced wholeheartedly by agencies in Wales’ (WG/YJB 2004: no pagination). As a strategy ‘children first’ cannot exist in isolation from other WG policies and the expectations it has of devolved services. The strategy therefore needs to be promoted not just through the Wales Youth Justice Advisory Panel, but other cross-departmental and cross-government fora in Wales, as well as with the mainstream and other services that are expected to deliver it. This is likely to require a

process of continuous awareness-raising, as chapter four identified that government officials change (as do key individuals in all organisations) and their knowledge and interest in youth justice can be variable.

Thirdly, the Youth Crime Prevention Fund is used by the WG to support the implementation of youth justice policy in Wales. This funding acts as a lever for ensuring the national strategy is implemented, by funding activities that align with its objectives. It is understood the Fund has been directed in this way (see pages 54 and 104). However, aside from Cardiff University et al's (2009) evaluation of the Fund, there is no publicly available information that might indicate the effectiveness of this leverage on promoting 'children first' practice in Wales and what it looks like. Providing more information about this could be helpful in understanding how youth justice in Wales operates.

Fourthly, information about the implementation of the 'children first' strategy has been made available in the aforementioned Cardiff University study (ibid), the original AWYOS in 2004 (WG/YJB 2009) and the 2009-11 Delivery Plan (WG/YJB 2009) and more latterly in 2014 (WG/YJB n.d.b) and 2015 (WG/YJB n.d.c). Reporting on actions taken and externally communicating to the youth justice community and other stakeholders has been intermittent, although may now be more consistent in view of the more recent publications. The evidence from this study suggests there is a need for awareness-raising of the strategy and its aims in the policy and practice communities. That said the Wales Youth Justice Advisory Panel is one mechanism that it is used for this purpose, but the lack of knowledge in the practitioner community, suggests the WG and YJB should consider what else can be done to build on the processes already in place.

11.5 Conclusion – a real or an imaginary dragon?

There is a distinction in policy and rhetoric between England and Wales as far as youth justice is concerned, that is moderated by a requirement to accommodate the UKG justice framework. The main points of difference being that WG policies that relate to children and young people are rights-led and underpinned by the UNCRC, whereas the UKG policies are risk-led. WG youth justice policies place significant emphasis on encouraging universal and mainstream services to support young people in the youth justice system, whereas in England attention remains on addressing offending behaviour. This has led some to posit the 'dragonisation' theory, which if evident, should reflect different approaches to practice, cultural differences between YOTs in England and in Wales and outcomes for children and young people.

The findings of this thesis indicate that although there are policy differences, there have been attempts to accommodate them, through a joint national strategy for youth justice. However, the outcomes for young people in both countries have followed similar trajectories and are comparable in what has been achieved. At practitioner level there is limited knowledge of Welsh youth justice policy, difficulty in conceptualising rights-led practice, but there has been some strategic influence in promoting the importance of young people being able to access their entitlement to services and support and this being a function that devolved services should address.

Where there are differences between (and within) YOTs, they do not reflect a national divide between England and Wales, that could characterise practice in each country in a particular way. Rather where differences existed, they reflected local variations that derived from historical developments, team culture, the approach of the YOT manager and external influences, such as Inspection. All YOTs had a similar focus on welfare and risk and made attempts to strike a balance between the two. There was a commitment to ensuring children's best interests, unless the offending behaviour was serious, in which case, public protection became more of an overriding concern.

In conclusion, the 'children first' policy has had limited direct impact, although a commitment to addressing welfare needs is apparent in both England and in Wales, so interestingly by default a 'children first' approach does exist. However, the evidence of 'dragonisation' was not strong enough in the research sites to suggest that it is apparent to any significant degree as a national approach. The research has focused on youth justice practitioners' views and experience, but what is known less about is the extent of knowledge of and understanding of 'children first' within the devolved services that should be providing access to entitlements and support; this would be an obvious area for further investigation and research.

It remains to be seen whether youth justice will be devolved to the WG and whether this will result in a more pronounced difference between the two countries. It will ultimately be determined by the nature of any devolution settlement, the autonomy the WG receives from it and the policies that emerge. However, given the general commitment to acting in children's 'best interests', it would seem that a welfare-orientation is already apparent in the YOTs examined in Wales and this suggests there is a good foundation to build from, should this be the future direction of travel.

APPENDIX ONE: RANKING EXERCISE

Ranking youth justice principles

The following is a list of issues that reflect different approaches to youth justice policies and practices. They are currently listed alphabetically.

Please rank them in the order of priority you would give to the importance of this issue, for working with young people in the youth justice system.

The ranking order should be 1 = top priority, 10 = low priority. Please do not give issues equal ranking.

APPROACH TO WORKING WITH CHILDREN AND YOUNG PEOPLE	YOUR RANKING
Act in the best interests of children and young people	
Early intervention	
Ensure there is a proportionate response to offending	
Improve parenting	
Make children and young people responsible for their actions	
Prevent offending	
Promote public confidence	
Protect the public	
Risk-led practice	
Use restorative approaches	

Please could you briefly explain your rankings, in particular, the issues you have chosen to be at the top and bottom of your list:

--

APPENDIX TWO: PRACTICE APPROACHES - WHAT SHOULD AND WHAT DOES HAPPEN IN PRACTICE

This questionnaire has been designed to find out a) what you consider should happen in youth justice practice in your area and b) what does happen.

For each of the statements below please indicate what you think should happen and what does happen by ticking the appropriate box.

When recording your responses please could you also give a brief explanation of why you have answered as you have.

	WHAT SHOULD HAPPEN					WHAT DOES HAPPEN				
	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
Children's rights are given high priority in youth justice policy and practice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
Young people are given very little say in the decisions that affect them when they come into contact with the criminal justice system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										

	WHAT SHOULD HAPPEN					WHAT DOES HAPPEN				
Children's Services should be the lead agency working with those at risk of offending	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
Targeted prevention and early intervention prevents criminalisation	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
Informal diversion processes prioritised over formal sanctions that criminalise young people	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										

	WHAT SHOULD HAPPEN					WHAT DOES HAPPEN				
Young people always punished for criminal acts	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
The youth justice system prioritises criminal justice sanctions over welfare needs	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
All actions taken are in the best interests of the child	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										

	WHAT SHOULD HAPPEN					WHAT DOES HAPPEN				
All actions taken are in the interests of public protection	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										
Restorative approaches always part of the criminal justice response	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment										

APPENDIX C: OTHER PRACTICE APPROACHES

Please indicate the degree to which you agree or disagree with the following statements and give a brief explanation of why you have answered as you have:

QUESTION	RESPONSE
Unless young people are confronted with the consequences of their actions they will not stop offending	<div>Strongly Agree Disagree Strongly</div> <div>Agree Disagree</div> <div> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div>
Comment	
There should be increasingly punitive responses to continued offending, regardless of its seriousness	<div>Strongly Agree Disagree Strongly</div> <div>Don't Agree Know Disagree</div> <div> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div>
Comment	
There should be mandatory penalties for children and young people	<div>Strongly Agree Disagree Strongly</div> <div>Don't Agree Know Disagree</div> <div> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div>
Comment	

QUESTION	RESPONSE				
Parents should be made to accept responsibility for the actions of their children	Strongly Don't Agree Know	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					
Without a set of National Standards to operate to, the youth justice system will lose effectiveness	Strongly Don't Agree Know	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					
The use of discretion should be maximised in youth justice practice	Strongly Don't Agree Know	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					
Payments by results provides an incentive to reduce offending	Strongly Don't Agree Know	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					

QUESTION	RESPONSE				
Community alternatives are always preferable to custodial options	Strongly Don't Agree Know	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					
Custody is always a negative experience for young people	Strongly Agree	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					
An effective youth justice system must identify risk and sucessfully manage it	Strongly Agree	Agree	Disagree	Strongly Disagree	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comment					

What recommendation would you make to improve the effectiveness of the youth justice system?

APPENDIX D: INTERVIEW SCHEDULE

Your details

- Job title
- Please describe your role within the team, how long you have been a youth justice practitioner and the length of time you have worked in this YOT.
- Have you ever worked in a YOT in England or in Wales (*if so, obtain more details – e.g. when, where, doing what etc*)

Questions

1. Does your team have a common ethos/particular principles it tries to work to – if so, please describe?
2. What do you understand by a) a 'children first and offenders second' approach to youth justice and b) how does it relate to the way in which you and your YOT operates?
3. Describe how you incorporate children's rights approach in your practice? (*explore any links to the UNCRC, the role of 'participation' etc*)
4. What do you think the roles of a) YOTs and b) mainstream services should be in preventing (pre-)offending?
5. What influence does the YJB have on a) youth justice policy and b) your practice?
6. **Welsh YOTs only** – What influence does the Welsh Government have on a) youth justice policy and b) your practice?
7. There have been significant reductions in the numbers of first time entrants into the youth justice system, why do you think this has occurred?
8. There have been significant reductions in the custodial population why do you think this has occurred?
9. Is there anything else you would like to add?

LIST OF ABBREVIATIONS

ASB	Anti Social Behaviour
ASBO	Anti Social Behaviour Order
APIS	Assessment, Planning, Interventions and Supervision
AWYOS	All Wales Youth Offending Strategy
CIN	Children in Need
DCSF	Department for Children Schools and Families
HMIP	Her Majesty's Inspectorate of Probation
LASPO	Legal Aid, Sentencing and Punishment of Offenders (Act)
NS	National Standards for Youth Justice
NAW	National Assembly for Wales
NOMS	National Offender Management Service
PbR	Payments by Results
PCC	Police and Crime Commissioner
SA	Scaled Approach
TYC	Transforming Youth Custody
UKG	United Kingdom Government
WAG	Welsh Assembly Government
WG	Welsh Government
YOI	Young Offender Institution
YOT	Youth Offending Team
YJB	Youth Justice Board for England and Wales

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